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| Council/Agency Meeting Held:_____<br>Deferred/Continued to:_____<br>❑ Approved ❑ Conditionally Approved ❑ Denied | _____<br>City Clerk's Signature |
| Council Meeting Date: 11/5/2007 | Department ID Number: PL 07-29 |

# CITY OF HUNTINGTON BEACH
## REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS

**SUBMITTED BY:** PENELOPE CULBRETH-GRAFT, DPA, CITY ADMINISTRATOR

**PREPARED BY:** SCOTT HESS, DIRECTOR OF PLANNING

**SUBJECT:** APPROVE ZONING TEXT AMENDMENT NO. 07-003 (MEDICAL MARIJUANA DISPENSARIES)

**Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)**

**Statement of Issue:**

Transmitted for your consideration is Zoning Text Amendment No. 07-003, which is a request to amend Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to delete all references to medical marijuana dispensaries. This zoning text amendment was initiated pursuant to an H-Item from Mayor Coerper, which was approved by the City Council in July 2005.

Both the Planning Commission and staff recommend approval of the request which will allow the HBZSO to be consistent with federal law, which considers medical marijuana dispensaries illegal.

**Funding Source:** Not applicable.

**Recommended Action:**

PLANNING COMMISSION AND STAFF RECOMMENDATION:

Motion to:

"Approve Zoning Text Amendment No. 07-003 with findings for approval (ATTACHMENT NO. 1) and adopt Ordinance No. 3788, an ordinance of the City of Huntington Beach amending Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance pertaining to medical marijuana dispensaries (ATTACHMENT NO. 2)."

D-2

*Planning Commission Action on August 14, 2007:*

THE MOTION MADE BY LIVENGOOD, SECONDED BY SHAW, TO CONTINUE ZONING TEXT AMENDMENT NO. 07-003 AND DIRECT STAFF TO PROVIDE THE ADDITIONAL INFORMATION REQUESTED CARRIED BY THE FOLLOWING VOTE:

| | |
|---|---|
| AYES: | SHIER-BURNETT, SPEAKER, LIVENGOOD, SCANDURA, SHAW, DWYER, FARLEY |
| NOES: | NONE |
| ABSENT: | NONE |
| ABSTAIN: | NONE |

***MOTION PASSED***

*Planning Commission Action on September 11, 2007:*

THE MOTION MADE BY LIVENGOOD, SECONDED BY SPEAKER, TO CONTINUE ZONING TEXT AMENDMENT NO. 07-003 TO THE SEPTEMBER 25, 2007 MEETING CARRIED BY THE FOLLOWING VOTE:

| | |
|---|---|
| AYES: | SHIER-BURNETT, SPEAKER, LIVENGOOD, SCANDURA, SHAW, FARLEY |
| NOES: | DWYER |
| ABSENT: | NONE |
| ABSTAIN: | NONE |

***MOTION PASSED***

*Planning Commission Action on September 25, 2007:*

THE MOTION MADE BY LIVENGOOD, SECONDED BY SPEAKER, TO APPROVE ZONING TEXT AMENDMENT NO. 07-003 WITH REVISED FINDINGS AND FORWARD TO THE CITY COUNCIL FOR ADOPTION CARRIED BY THE FOLLOWING VOTE:

| | |
|---|---|
| AYES: | SPEAKER, LIVENGOOD, SCANDURA, DWYER, FARLEY |
| NOES: | SHAW |
| ABSENT: | NONE |
| ABSTAIN: | SHIER-BURNETT |

***MOTION PASSED***

**Alternative Action(s):**

The City Council may make the following alternative motion(s):

1. "Deny Zoning Text Amendment No. 07-003 with findings for denial."

2. "Continue Zoning Text Amendment No. 07-003 and direct staff accordingly."

**Analysis:**

A. PROJECT PROPOSAL:

Applicant: City of Huntington Beach

Location: Industrial Districts Citywide

Zoning Text Amendment No. 07-003 represents a request to amend Chapters 204 and 212 of the HBZSO to delete all references to medical marijuana dispensaries pursuant to Chapter 247 of the HBZSO.

B. BACKGROUND

In March 2005 the City Council adopted Ordinance No. 3703 permitting medical marijuana dispensaries in the IG (General Industrial) and IL (Limited Industrial) zoning districts of the city subject to additional requirements. A recent federal decision has affirmed once more that even where an individual appropriately adheres to California law under Proposition 215 (Compassionate Use Act), he or she may be prosecuted under federal law for the use, possession, or distribution of marijuana. Therefore, this zoning text amendment proposes to delete all references to medical marijuana dispensaries from the HBZSO (see Attachment Nos. 3.6-3.7, 3.13, 3.20-3.21) to be consistent with recent case law. Attachment No. 5 to this report is more legal background information relating to the request from the City Attorney.

C. PLANNING COMMISSION MEETING AND RECOMMENDATION:

On August 14, 2007 the Planning Commission considered the request and discussed Proposition 215, federal law, and applicable court cases, among others. Three speakers were in opposition to the request citing that the City must follow state law. The Planning Commission continued the item to September 11, 2007 and requested that staff provide additional information regarding Senate Bill 420, Proposition 215, relevant court cases, the California Constitution, and the Unruh Civil Rights Act.

On August 28, 2007 the Planning Commission conducted a study session to review the additional information they requested. There were no speakers at the study session. Due to a heavy agenda on September 11, 2007 the Planning Commission continued the item to the September 25, 2007 meeting.

On September 25, 2007 the Planning Commission considered the request again. Police Chief Small presented information regarding documented adverse impacts of medical marijuana dispensaries. The Planning Commission voted to recommend approval of the request to the City Council with revised findings. Commissioner Shaw voted in opposition citing concerns about taking away medication from the sick.

D. STAFF ANALYSIS AND RECOMMENDATION:

Approval of the request will not affect land use compatibility and will not change the development standards in the IG and IL zoning districts. Staff recommends approval because it will bring the HBZSO into conformance with federal law, which considers medical marijuana dispensaries illegal.

**Strategic Plan Goal:**

The request is consistent with the following Strategic Plan goal:

Preserve the quality of our neighborhoods, maintain open space, and provide for the preservation of historic neighborhoods because it will protect our neighborhoods from the adverse impacts of medical marijuana dispensaries.

**Environmental Status:**

The request is categorically exempt pursuant to City Council Resolution No. 4501, Class 20 which states that minor amendments to zoning ordinances that do not change the development standards, intensity, or density of such districts are exempt from further environmental review.

**Attachment(s):**

| City Clerk's Page Number | No. | Description |
|---|---|---|
| 6 | 1. | Suggested Findings for Approval – ZTA No. 07-003 |
| 8 | 2. | Ordinance No. 3788 Amending Chapters 204 and 212 of the HBZSO Pertaining to Medical Marijuana Dispensaries |
| 10 | 3. | Legislative Draft of Chapters 204 and 212 of the HBZSO |
| 35 | 4. | Planning Commission Staff Report dated August 14, 2007 |
| 39 | 5. | Background Legal Information from the City Attorney |
| 43 | 6. | Minutes of July 18, 2005 City Council Meeting |
| 46 | 7. | Letters in Opposition and/or Support |
| 107 | 8. | Gonzales v. Raich (United States Court of Appeals and Supreme Court decisions) |
| 172 | 9. | Section 3.5 of Article III of the California Constitution |
| 174 | 10. | Unruh Civil Rights Act (Civil Code Sec. 51 et seq.) |
| 187 | 11. | Proposition 215 |
| 190 | 12. | Senate Bill 420 (2003) |

| City Clerk's Page Number | No. | Description |
|---|---|---|
| 205 | 13. | California Health and Safety Code Sections 11362.5 through 11362.9 |
| 234 | 14. | Request for City Council Action dated March 21, 2005 (zoning text amendment to include medical marijuana dispensaries) |
| 273 | 15. | Minutes of March 21, 2005 City Council Meeting |
| 275 | 16. | City of Anaheim Council Agenda Report dated July 31, 2007 (prohibiting medical marijuana dispensaries) |
| 283 | 17. | Attorney General Lockyer Statement on US Supreme Court's Medical Marijuana Ruling dated June 6, 2005 |
| 285 | 18. | PowerPoint Presentation Slides |

RCA Authors: Ramos/Broeren

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# ATTACHMENT #1

# ATTACHMENT NO. 1

## SUGGESTED FINDINGS FOR APPROVAL

## ZONING TEXT AMENDMENT NO. 07-003

**SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:**

The City Council finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City Council Resolution No. 4501, Class 20 which states that minor amendments to zoning ordinances that do not change the development standards, intensity, or density of such districts are exempt from further environmental review.

**SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 07-003:**

1. Zoning Text Amendment No. 07-003 to delete all references to medical marijuana dispensaries from the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) is consistent with the objectives, policies, general land uses and programs specified in the General Plan. The proposed zoning text amendment affects properties with a General Plan Land Use Map designation of Industrial. The proposal is consistent with the Industrial designation and the goals and objectives of the City's General Plan by deleting all references to medical marijuana dispensaries while continuing to allow typical industrial uses such as manufacturing and warehousing.

2. In the case of a general land use provision, Zoning Text Amendment No. 07-003 is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed because it involves only the deletion of all references to medical marijuana dispensaries from the HBZSO. The other land uses and development standards identified in the IG and IL zoning districts will remain unchanged.

3. A community need is demonstrated for the change proposed. Zoning Text Amendment No. 07-003 will delete all references to medical marijuana dispensaries from the HBZSO consistent with case law and federal law.

4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice.

# ATTACHMENT #2

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ORDINANCE NO. 3788

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH AMENDING CHAPTERS 204 AND 212 OF THE HUNTINGTON BEACH ZONING AND SUBDIVISION ORDINANCE PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That language in subsection R of Section 204.10 of the Huntington Beach Zoning and Subdivision Ordinance is hereby deleted. (For clerical purposes the letter "R" has been retained.)

SECTION 2. In Section 212.04 Land Use Controls, reference to Medical Marijuana Dispensary and Provision L-13 are hereby deleted in their entirety.

SECTION 3. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2007

_____
Mayor

ATTEST:

_____
City Clerk

REVIEWED AND APPROVED:

_____
City Administrator

INITIATED AND APPROVED AS TO FORM:

_____
City Attorney 4.28.07

4.28.07

REVIEWED AND APPROVED:

_____
Director of Planning

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# ATTACHMENT #3

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ORDINANCE NO 3788

**LEGISLATIVE DRAFT**

# Chapter 204 Use Classifications

(3334-6/97, 3378-2/98, 3521-2/02, 3568-9/02, 3669-12/04, Emergency Ord. 3703-3/05, 3724-02/06, 3757-1/07)

**Sections:**



## 204.02 Applicability

Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The Director shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this Title. The Director may determine that a specific use shall not be deemed to be within a classification, if its characteristics are substantially different than those typical of uses named within the classification. The Director's decision may be appealed to the Planning Commission. (3334-6/97)

## 204.04 Uses Not Classified

Any new use, or any use that cannot be clearly determined to be in an existing use classification, may be incorporated into the zoning provisions by a Zoning and Subdivision Ordinance text amendment, as provided in Chapter 247. Such an incorporation shall not be effective unless certified by the Coastal Commission as a Local Coastal Program amendment. (3334-6/97)

## 204.06 Residential Use Classifications

A. Day Care, Limited (or Small-Family). Non-medical care and supervision of six or fewer persons, or eight or fewer persons if two of the persons are six years of age or older, on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits. This classification includes nursery schools, preschools, and day-care centers for children and adults. (3334-6/97,3669-12/04)

B. Group Residential. Shared living quarters without separate kitchen or bathroom facilities for each room or unit. This classification includes boarding houses, but excludes residential hotels or motels. (3334-6/97)

C. Multifamily Residential. Two or more dwelling units on a site. This classification includes manufactured homes. (3334-6/97)

D. Residential Alcohol Recovery, Limited. Twenty-four-hour care for no more than six persons suffering from alcohol problems in need of personal services,

supervision, protection or assistance. This classification includes only those facilities licensed by the State of California. (3334-6/97)

E. Residential Care, Limited. Twenty-four-hour non-medical care for 6 or fewer persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those services and facilities licensed by the State of California. (3334-6/97)

F. Single-Family Residential. Buildings containing one dwelling unit located on a single lot. This classification includes manufactured homes. (3334-6/97)

**204.08 Public and Semipublic Use Classifications**

A. Cemetery. Land used or intended to be used for the burial of human remains and dedicated for cemetery purposes. Cemetery purposes include columbariums, crematoriums, mausoleums, and mortuaries operated in conjunction with the cemetery, business and administrative offices, chapels, flower shops, and necessary maintenance facilities. (3334-6/97)

B. Clubs and Lodges. Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union halls, social clubs and youth centers. (3334-6/97)

C. Community and Human Service Facilities.

1. Drug Abuse Centers. Facilities offering drop-in services for persons suffering from drug abuse, including treatment and counseling without provision for on-site residence or confinement. (3334-6/97)

2. Primary Health Care. Medical services, including clinics, counseling and referral services, to persons afflicted with bodily or mental disease or injury without provision for on-site residence or confinement. (3334-6/97)

3. Emergency Kitchens. Establishments offering food for the "homeless" and others in need. (3334-6/97)

4. Emergency Shelters. Establishments offering food and shelter programs for "homeless" people and others in need. This classification does not include facilities licensed for residential care, as defined by the State of California, which provide supervision of daily activities. (3334-6/97)

5. Residential Alcohol Recovery, General. Facilities providing 24-hour care for more than six persons suffering from alcohol problems, in need of personal services, supervision, protection or assistance. These facilities may include an inebriate reception center as well as facilities for treatment, training, research, and administrative services for program participants and employees. This classification includes only those facilities licensed by the State of California. (3334-6/97)

6. Residential Care, General. Twenty-four-hour non-medical care for seven or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those facilities licensed by the State of California. (3334-6/97)

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D. Convalescent Facilities. Establishments providing care on a 24-hour basis for persons requiring regular medical attention, but excluding facilities providing surgical or emergency medical services. (3334-6/97)

E. Cultural Institutions. Nonprofit institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes libraries, museums, and art galleries. (3334-6/97)

F. Day Care, Large-Family. Non-medical care and supervision for 7 to 12 persons, or up to 14 persons if two of the persons are six years of age or older on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits.
(3334-6/97,3669-12/04)

G. Day Care, General. Non-medical care for 13 or more persons on a less than 24-hour basis. This classification includes nursery schools, preschools, and day-care centers for children or adults. (3334-6/97, 3669-12/04)

H. Emergency Health Care. Facilities providing emergency medical service with no provision for continuing care on an inpatient basis. (3334-6/97)

I. Government Offices. Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles. (3334-6/97)

J. Heliports. Pads and facilities enabling takeoffs and landings by helicopter. (3334-6/97)

K. Hospitals. Facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons, primarily on an inpatient basis. This classification includes incidental facilities for out-patient treatment, as well as training, research, and administrative services for patients and employees. (3334-6/97)

L. Maintenance and Service Facilities. Facilities providing maintenance and repair services for vehicles and equipment, and materials storage areas. This classification includes corporation yards, equipment service centers, and similar facilities. (3334-6/97)

M. Marinas. A boat basin with docks, mooring facilities, supplies and equipment for small boats. (3334-6/97)

N. Park and Recreation Facilities. Noncommercial parks, playgrounds, recreation facilities, and open spaces. (3334-6/97)

O. Public Safety Facilities. Facilities for public safety and emergency services, including police and fire protection. (3334-6/97)

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P. Religious Assembly. Facilities for religious worship and incidental religious education, but not including private schools as defined in this section. (3334-6/97)

Q. Schools, Public or Private. Educational institutions having a curriculum comparable to that required in the public schools of the State of California.
(3334-6/97)

R. Utilities, Major. Generating plants, electrical substations, above-ground electrical transmission lines, switching buildings, refuse collection, transfer, recycling or disposal facilities, flood control or drainage facilities, water or wastewater

treatment plants, transportation or communications utilities, and similar facilities of public agencies or public utilities. (3334-6/97)

S. Utilities, Minor. Utility facilities that are necessary to support legally established uses and involve only minor structures such as electrical distribution lines, underground water and sewer lines, and recycling and collection containers. (3334-6/97)

**204.10 Commercial Use Classifications**

A. Ambulance Services. Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles as regulated by Chapter 5.20. (3334-6/97, 3378-2/98)

B. Animal Sales and Services.

1. Animal Boarding. Provision of shelter and care for small animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care, and kennels. (3334-6/97)

2. Animal Grooming. Provision of bathing and trimming services for small animals on a commercial basis. This classification includes boarding for a maximum period of 48 hours. (3334-6/97)

3. Animal Hospitals. Establishments where small animals receive medical and surgical treatment. This classification includes only facilities that are entirely enclosed, soundproofed, and air- conditioned. Grooming and temporary (maximum 30 days) boarding of animals are included, if incidental to the hospital use. (3334-6/97)

4. Animals: Retail Sales. Retail sales and boarding of small animals, provided such activities take place within an entirely enclosed building. This classification includes grooming, if incidental to the retail use, and boarding of animals not offered for sale for a maximum period of 48 hours. (3334-6/97)

5. Equestrian Centers. Establishments offering facilities for instruction in horseback riding, including rings, stables, and exercise areas. (3334-6/97)

6. Pet Cemetery. Land used or intended to be used for the burial of animals, ashes or remains of dead animals, including placement or erection of markers, headstones or monuments over such places of burial. (3334-6/97)

C. Artists' Studios. Work space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft. (3334-6/97)

D. Banks and Savings and Loans. Financial institutions that provide retail banking services to individuals and businesses. This classification includes only those institutions engaged in the on-site circulation of cash money. It also includes businesses offering check-cashing facilities. (3334-6/97, 3378-2/98)

1. With Drive-up Service. Institutions providing services accessible to persons who remain in their automobiles. (3334-6/97)

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E. Building Materials and Services. Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and building contractors' yards, but

excludes establishments devoted exclusively to retail sales of paint and hardware, and activities classified under Vehicle/Equipment Sales and Services. (3334-6/97, 3378-2/98)

F. Catering Services. Preparation and delivery of food and beverages for off-site consumption without provision for on-site pickup or consumption. (See also Eating and Drinking Establishments.) (3334-6/97, 3378-2/98)

G. Commercial Filming. Commercial motion picture or video photography at the same location more than six days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97, 3378-2/98)

H. Commercial Recreation and Entertainment. Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors and poolrooms as regulated by Chapter 9.32; dance halls as regulated by Chapter 5.28; ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/racquetball courts, health/fitness clubs, pinball arcades or electronic games centers, cyber café having more than 4 coin-operated game machines as regulated by Chapter 9.28; card rooms as regulated by Chapter 9.24; and fortune telling as regulated by Chapter 5.72. (3334-6/97, 3378-2/98, 3669-12/04)

1. Limited. Indoor movie theaters, game centers and performing arts theaters and health/fitness clubs occupying less than 2,500 square feet. (3334-6/97)

I. Communications Facilities. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; telegraph offices; and wireless communication facilities. (3334-6/97, 3378-2/98, 3568-9/02)

J. Eating and Drinking Establishments. Businesses serving prepared food or beverages for consumption on or off the premises. (3334-6/97, 3378-2/98)

1. With Fast-Food or Take-Out Service. Establishments where patrons order and pay for their food at a counter or window before it is consumed and may either pick up or be served such food at a table or take it off-site for consumption. (3334-6/97)

a. Drive-through. Service from a building to persons in vehicles through an outdoor service window. (3334-6/97)

b. Limited. Establishments that do not serve persons in vehicles or at a table. (3334-6/97)

2. With Live Entertainment/Dancing. An eating or drinking establishment where dancing and/or live entertainment is allowed. This classification includes nightclubs subject to the requirements of Chapter 5.44 of the Municipal Code. (3334-6/97)

K. Food and Beverage Sales. Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as Catering Services or Eating and Drinking Establishments. (3334-6/97, 3378-2/98)

1. With Alcoholic Beverage Sales. Establishments where more than 10 percent of the floor area is devoted to sales, display and storage of alcoholic beverages. (3334-6/97)

L. Food Processing. Establishments primarily engaged in the manufacturing or processing of food or beverages for human consumption and wholesale distribution. (3334-6/97, 3378-2/98)

M. Funeral and Interment Services. Establishments primarily engaged in the provision of services involving the care, preparation or disposition of human dead other than in cemeteries. Typical uses include crematories, columbariums, mausoleums or mortuaries. (3334-6/97, 3378-2/98)

N. Horticulture. The raising of fruits, vegetables, flowers, trees, and shrubs as a commercial enterprise. (3334-6/97, 3378-2/98)

O. Laboratories. Establishments providing medical or dental laboratory services; or establishments with less than 2,000 square feet providing photographic, analytical, or testing services. Other laboratories are classified as Limited Industry. (3334-6/97, 3378-2/98)

P. Maintenance and Repair Services. Establishments providing appliance repair, office machine repair, or building maintenance services. This classification excludes maintenance and repair of vehicles or boats; see (Vehicle/Equipment Repair). (3334-6/97)

Q. Marine Sales and Services. Establishments providing supplies and equipment for shipping or related services or pleasure boating. Typical uses include chandleries, yacht brokerage and sales, boat yards, boat docks, and sail-making lofts. (3334-6/97, 3378-2/98)

R. **RESERVED.**

~~Medical Marijuana Dispensary or Dispensary. Any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: (3703-3/05)~~

~~1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; (3703-3/05)~~

~~2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3703-3/05)~~

~~3. A residential care facility for persons with chronic life threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; (3703-3/05)~~

~~4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; (3703-3/05)~~

~~5. A residential hospice, or (3703-3/05)~~

~~6. A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with~~

~~applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.~~ (3703-3/05)

S. Nurseries. Establishments in which all merchandise other than plants is kept within an enclosed building or a fully screened enclosure, and fertilizer of any type is stored and sold in package form only. (3334-6/97, 3378-2/98)

T. Offices, Business and Professional. Offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, engineering, graphic design, interior design, real estate, insurance, investment, legal, veterinary, and medical/dental offices. This classification includes medical/dental laboratories incidental to an office use, but excludes banks and savings and loan associations.
(3334-6/97, 3378-2/98)

U. Pawn Shops. Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans secured by personal property and subject to Chapter 5.36 of the Municipal Code.
(3334-6/97, 3378-2/98)

V. Personal Enrichment Services. Provision of instructional services or facilities, including photography, fine arts, crafts, dance or music studios, driving schools, business and trade schools, and diet centers, reducing salons, fitness studios, yoga or martial arts studios, and massage in conjunction with Personal Services business.
(3334-6/97, 3378-2/98, 3669-12/04)

W. Personal Services. Provision of recurrently needed services of a personal nature. This classification includes barber and beauty shops, seamstresses, tailors, shoe repair shops, dry-cleaning businesses (excluding large-scale bulk cleaning plants), photo-copying, and self-service laundries.
(3334-6/97, 3378-2/98)

X. Research and Development Services. Establishments primarily engaged in industrial or scientific research, including limited product testing. This classification includes electron research firms or pharmaceutical research laboratories, but excludes manufacturing, except of prototypes, or medical testing and analysis. (3334-6/97, 3378-2/98)

Y. Retail Sales. The retail sale of merchandise not specifically listed under another use classification. This classification includes department stores, drug stores, clothing stores, and furniture stores, and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies, medical supplies and equipment, electronic equipment, records, sporting goods, surfing boards and equipment, kitchen utensils, hardware, appliances, antiques, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, and new automotive parts and accessories (excluding service and installation).
(3334-6/97, 3378-2/98)

Z. Secondhand Appliances and Clothing Sales. The retail sale of used appliances and clothing by secondhand dealers who are subject to Chapter 5.36. This classification excludes antique shops primarily engaged in the sale of used furniture and accessories other than appliances, but includes junk shops. (3334-6/97, 3378-2/98)

AA Sex Oriented Businesses. Establishments as regulated by Chapter 5.70; baths, sauna baths and massage establishments, as regulated by Chapter 5.24; and figure model studios as regulated by Chapter 5.60. (3378-2/98)

BB. Swap Meets, Indoor/Flea Markets. An occasional, periodic or regularly scheduled market held within a building where groups of individual vendors offer goods for sale to the public. (3334-6/97)

CC. Swap Meets, Recurring. Retail sale or exchange of handcrafted or secondhand merchandise for a maximum period of 32 consecutive hours, conducted by a sponsor on a more than twice yearly basis. (3334-6/97)

DD. Tattoo Establishment. Premises used for the business of marking or coloring the skin with tattoos as regulated by Chapter 8.70. (3334-6/97)

EE. Travel Services. Establishments providing travel information and reservations to individuals and businesses. This classification excludes car rental agencies. (3334-6/97)

FF. Vehicle/Equipment Sales and Services.

1. Automobile Rentals. Rental of automobiles, including storage and incidental maintenance, but excluding maintenance requiring pneumatic lifts. (3334-6/97)

2. Automobile Washing. Washing, waxing, or cleaning of automobiles or similar light vehicles. (3334-6/97)

3. Commercial Parking Facility. Lots offering short-term or long-term parking to the public for a fee. (3334-6/97)

4. Service Stations. Establishments engaged in the retail sale of gas, diesel fuel, lubricants, parts, and accessories. This classification includes incidental maintenance and minor repair of motor vehicles, but excluding body and fender work or major repair of automobiles, motorcycles, light and heavy trucks or other vehicles. (3334-6/97)

5. Vehicle/Equipment Repair. Repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes auto repair shops, body and fender shops, transmission shops, wheel and brake shops, and tire sales and installation, but excludes vehicle dismantling or salvage and tire retreading or recapping. (3334-6/97)

   a. Limited. Light repair and sale of goods and services for vehicles, including brakes, muffler, tire shops, oil and lube, and accessory uses, but excluding body and fender shops, upholstery, painting, and rebuilding or reconditioning of vehicles. (3334-6/97)

6. Vehicle/Equipment Sales and Rentals. Sale or rental of automobiles, motorcycles, trucks, tractors, construction or agricultural equipment, manufactured homes, boats, and similar equipment, including storage and incidental maintenance. (3334-6/97)

7. Vehicle Storage. The business of storing or safekeeping of operative and inoperative vehicles for periods of time greater than a 24 hour period, including, but not limited to, the storage of parking tow-aways, impound



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yards, and storage lots for automobiles, trucks, buses and recreational vehicles, but not including vehicle dismantling. (3334-6/97, 3757-1/07)

GG. Visitor Accommodations.

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling or a building of residential design, with incidental eating and drinking service for lodgers only provided from a single kitchen. (3334-6/97)

2. Hotels and Motels. Establishments offering lodging on a weekly or less than weekly basis. Motels may have kitchens in no more than 25 percent of guest units, and "suite" hotels may have kitchens in all units. This classification includes eating, drinking, and banquet service associated with the facility. (3334-6/97)

HH. Warehouse and Sales Outlets. Businesses which store large inventories of goods in industrial-style buildings where these goods are not produced on the site but are offered to the public for sale. (3334-6/97)

II. Quasi Residential

1. Residential Hotels. Buildings with 6 or more guest rooms without kitchen facilities in individual rooms, or kitchen facilities for the exclusive use of guests, and which are intended for occupancy on a weekly or monthly basis. (3334-6/97)

2. Single Room Occupancy. Buildings designed as a residential hotel consisting of a cluster of guest units providing sleeping and living facilities in which sanitary facilities and cooking facilities are provided within each unit; tenancies are weekly or monthly. (3334-6/97)

3. Time-Share Facilities. A facility in which the purchaser receives the right in perpetuity, for life or for a term of years, to the recurrent exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis for a period of time that has been or will be allocated from the use or occupancy periods into which the plan has been divided. A time-share plan may be coupled with an estate in the real property or it may entail a license or contract and/or membership right of occupancy not coupled with an estate in the real property. (3334-6/97)

**204.12 Industrial Use Classifications** D2 . 19

A. Industry, Custom. Establishments primarily engaged in on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment. (3334-6/97)

1. Small-scale. Includes mechanical equipment not exceeding 2 horsepower or a single kiln not exceeding 8 kilowatts and the incidental direct sale to consumers of only those goods produced on-site. Typical uses include ceramic studios, candle-making shops, and custom jewelry manufacture. (3334-6/97)

B. Industry, General. Manufacturing of products, primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or

outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, food processing and packaging, laundry and dry cleaning plants, auto dismantling within an enclosed building, stonework and concrete products manufacture (excluding concrete ready-mix plants), small animal production and processing within an enclosed building, and power generation. (3334-6/97)

C. Industry, Limited. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services, both within an enclosed building. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials and Vehicle/Equipment Services, but does allow food processing for human consumption. (3334-6/97)

D. Industry, Research and Development. Establishments primarily engaged in the research, development, and controlled production of high-technology electronic, industrial or scientific products or commodities for sale, but prohibits uses that may be objectionable in the opinion of the Director, by reason of production of offensive odor, dust, noise, vibration, or in the opinion of the Fire Chief by reason of storage of hazardous materials. Uses include aerospace and biotechnology firms, and non-toxic computer component manufacturers. (3334-6/97)

This classification also includes assembly, testing and repair of components, devices, equipment, systems, parts and components such as but not limited to the following: coils, tubes, semi-conductors; communication, navigation, guidance and control equipment; data processing equipment; filing and labeling machinery; glass edging and silvering equipment; graphics and art equipment; metering equipment; optical devices and equipment; photographic equipment; radar, infrared and ultraviolet equipment; radio and television equipment. (3334-6/97)

This classification also includes the manufacture of components, devices, equipment, parts and systems which includes assembly, fabricating, plating and processing, testing and repair, such as but not limited to the following: machine and metal fabricating shops, model and spray painting shops, environmental test, including vibration analysis, cryogenics, and related functions, plating and processing shops, nuclear and radioisotope. (3334-6/97)

This classification also includes research and development laboratories including biochemical and chemical development facilities for national welfare on land, sea, or air; and facilities for film and photography, metallurgy; pharmaceutical, and medical and x-ray research. (3334-6/97)

E. Wholesaling, Distribution and Storage. Storage and distribution facilities without sales to the public on-site or direct public access except for recycling facilities and public storage in a small individual space exclusively and directly accessible to a specific tenant. This classification includes mini-warehouses. (3334-6/97)

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### 204.14 Accessory Use Classifications

Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes detached or attached garages, home occupations, caretakers' units, and dormitory type housing for industrial commercial workers employed on the site, and accessory dwelling units. (3334-6/97)

## 204.16 Temporary Use Classifications

A. Animal Shows. Exhibitions of domestic or large animals for a maximum of seven days. (3334-6/97)

B. Festivals, Circuses and Carnivals. Provision of games, eating and drinking facilities, live entertainment, animal exhibitions, or similar activities in a tent or other temporary structure for a maximum of seven days. This classification excludes events conducted in a permanent entertainment facility. (3334-6/97, 3521-2/02)

C. Commercial Filming, Limited. Commercial motion picture or video photography at a specific location six or fewer days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97)

D. Personal Property Sales. Sales of personal property by a resident ("garage sales") for a period not to exceed 48 consecutive hours and no more than once every six months. (3334-6/97)

E. Real Estate Sales. An office for the marketing, sales, or rental of residential, commercial, or industrial development. This classification includes "model homes." (3334-6/97)

F. Retail Sales, Outdoor. Retail sales of new merchandise on the site of a legally established retail business for a period not to exceed 96 consecutive hours (four days) no more than once every 3 months. (3334-6/97, 3669-12/04)

G. Seasonal Sales. Retail sales of seasonal products, including Christmas trees, Halloween pumpkins and strawberries. (3334-6/97)

H. Street Fairs. Provision of games, eating and drinking facilities, live entertainment, or similar activities not requiring the use of roofed structures. (3334-6/97)

I. Trade Fairs. Display and sale of goods or equipment related to a specific trade or industry for a maximum period of five days per year. (3334-6/97)

J. Temporary Event. Those temporary activities located within the coastal zone that do not qualify for an exemption pursuant to Section 245.08. (3334-6/97)

K. Tent Event. Allows for the overflow of any assembly for a period not to exceed 72 consecutive hours and not more than once every 3 months. (3521-2/02, 3724-02/06)

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# Chapter 212 | Industrial Districts

(3254-10/94, 3378-2/98, 3523-2/02, 3568-9/02, Emergency Ord. 3703-3/21/05, 3708-6/05, 3724-02/06)

**Sections:**



## 212.02 Industrial Districts Established (3254-10/94)

Two (2) industrial zoning districts are established by this chapter as follows: (3254-10/94)

A. The IG General Industrial District provides sites for the full range of manufacturing, industrial processing, resource and energy production, general service, and distribution. (3254-10/94)

B. The IL Limited Industrial District provides sites for moderate- to low-intensity industrial uses, commercial services and light manufacturing. (3254-10/94)

## 212.04 IG and IL Districts: Land Use Controls (3254-10/94)

In the following schedules, letter designations are used as follows: (3254-10/94)

"P" designates use classifications permitted in the I districts. (3254-10/94)

"L" designates use classifications subject to certain limitations prescribed by the "Additional Provisions" which follow. (3254-10/94)

"PC" designates use classifications permitted on approval of a conditional use permit by the Planning Commission. (3254-10/94)

"ZA" designates use classifications permitted on approval of a conditional use permit by the Zoning Administrator. (3254-10/94)

"TU" designates use classifications allowed upon approval of a temporary use permit by the Zoning Administrator. (3254-10/94)

"P/U" for an accessory use means that the use is permitted on the site of a permitted use, but requires a conditional use permit on the site of a conditional use. (3254-10/94)

Use classifications that are not listed are prohibited. Letters in parentheses in the "Additional Provisions" column refer to requirements following the schedule or located elsewhere in this ordinance. Where letters in parentheses are opposite a use classification heading, referenced provisions shall apply to all use classifications under the heading. (3254-10/94)

**IG AND IL DISTRICTS: LAND USE CONTROLS**

P - Permitted
L - Limited (see Additional Provisions)
PC - Conditional use permit approved by Planning Commission
ZA - Conditional use permit approved by Zoning Administrator
TU - Temporary Use Permit
P/U - Requires conditional use permit on site of conditional use
- - Not Permitted

| | IG | IL | Additional Provisions |
|---|---|---|---|
| **Residential** | | | |
| Group Residential | PC | PC | (J) |
| **Public and Semipublic** | | | (A)(M)(3708-6/05, 3724-02/06) |
| Community and Human Service Facilities | PC | PC | (L) (3708-6/05, 3724-02/06) |
| Day Care, General | ZA | ZA | (3523-2/02) |
| Heliports | PC | PC | (O) |
| Maintenance & Serivce Facilities | ZA | ZA | (3708-6/05) |
| Public Safety Facilities | P | P | |
| Religious Assembly | ZA | ZA | (3724-02/06) |
| Schools, Public or Private | L-6 | L-6 | |
| Utilities, Major | PC | PC | |
| Utilities, Minor | L-7 | L-7 | (P) |
| **Commercial Uses** | | | (D)(M) |
| Ambulance Services | ZA | ZA | |
| Animal Sales and Services | | | |
| Animal Boarding | ZA | ZA | (3523-2/02) |
| Animal Hospitals | ZA | ZA | (3523-2/02) |
| Artists' Studios | P | P | |
| Banks and Savings and Loans | L-1 | L-1 | |
| Building Materials and Services | P | P | |
| Catering Services | - | P | |
| Commercial Filming | ZA | ZA | |
| Commercial Recreation and Entertainment | L-2 | L-2 | |
| Communication Facilities | L-12 | L-12 | (3568-9/02) |
| Eating & Drinking Establishments | L-3 | L-3 | |
| w/Live Entertainment | ZA | ZA | (S)(U) (3523-2/02) |
| Food & Beverage Sales | ZA | ZA | (3523-2/02) |
| Hospitals and Medical Clinics | - | PC | |
| Laboratories | P | P | |
| Maintenance & Repair Services | P | P | |
| Marine Sales and Services | P | P | |
| ~~Medical Marijuana Dispensary~~ | ~~P~~ | ~~P~~ | ~~(L-13)~~ (3703-3/05) |
| Nurseries | P | P | |
| Offices, Business & Professional | L-1 | L-1 | (H) |

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|---|---|
| **IG AND IL DISTRICTS: LAND USE CONTROLS** | P - Permitted<br>L - Limited (see Additional Provisions)<br>PC - Conditional use permit approved by Planning Commission<br>ZA - Conditional use permit approved by Zoning Administrator<br>TU - Temporary Use Permit<br>P/U - Requires conditional use permit on site of conditional use<br>- Not Permitted |

| | IG | IL | Additional Provisions | |
|---|---|---|---|---|
| Personal Enrichment | L-9 | L-9 | (U) | (3523-2/02) |
| Personal Services | L-1 | L-1 | | |
| Quasi Residential | PC | PC | (K) | (3708-6/05) |
| Research & Development Services | P | P | | |
| Sex Oriented Businesses | L-11 | L-11 | | (3378-2/98) |
| (regulated by HBMC Chapter 5.70) | | | | (3378-2/98) |
| Sex Oriented Businesses | PC | PC | (R) | (3378-2/98) |
| (regulated by HBMC Chapters 5.24 & 5.60) | | | | (3378-2/98) |
| Swap Meets, Indoor/Flea Markets | PC | PC | (Q) | |
| Vehicle/Equipment Sales & Services | | | | |
| Service Stations | L-4 | L-4 | | |
| Vehicle/Equipment Repair | P | P | | |
| Vehicle/Equip. Sales/Rentals | L-5 | L-5 | | |
| Vehicle Storage | P | ZA | (I) | |
| Visitor Accommodations | ZA | ZA | | (3708-6/05) |
| Warehouse and Sales Outlets | L-8 | L-8 | | |
| **Industrial** *(See Chapter 204)* | | | (B)(M)(N) | |
| Industry, Custom | P | P | | |
| Industry, General | P | P | | |
| Industry, Limited | P | P | | |
| Industry, R & D | P | P | | |
| Wholesaling, Distribution & Storage | P | P | | |
| **Accessory Uses** | | | | |
| Accessory Uses and Structures | P/U | P/U | (C) | |
| **Temporary Uses** | | | | |
| Commercial Filming, Limited | P | P | (T) | (3523-2/02) |
| Real Estate Sales | P | P | | (3 |
| | | | | 523-2/02,3708-6/05) |
| Trade Fairs | P | P | (E) | (3708-6/05) |
| **Nonconforming Uses** | | | (F) | |

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## IG AND IL Districts: Additional Provisions

L-1 Only allowed upon approval of a conditional use permit by the Zoning Administrator for a mixed use project, subject to the following requirements: (3254-10/94, 3708-6/05)

Minimum site area: 3 acres (3254-10/94)

Maximum commercial space: 35 percent of the gross floor area and 50 percent of the ground floor area of buildings fronting on an arterial highway. (3254-10/94)

Phased development: 25 percent of the initial phase must be designed for industrial occupancy. For projects over 500,000 square feet, the initial phase must include 5 percent of the total amount of industrial space or 50,000 square feet of industrial space, whichever is greater. (3254-10/94)

L-2 Allowed upon approval of a conditional use permit by the Zoning Administrator when designed and oriented for principal use by employees of the surrounding industrial development or when designed for general public use, after considering vehicular access and parking requirements. (3254-10/94, 3708-6/05)

L-3 Allowed upon approval of a conditional use permit by the Zoning Administrator when in a free-standing structure or as a secondary use in a building provided that no more than 20 percent of the floor area is occupied by such a use. (3254-10/94, 3523-2/02)

L-4 Only stations offering services primarily oriented to businesses located in an I District are allowed with a conditional use permit by the Planning Commission. (3254-10/94)

L-5 No new or used automobile, truck or motorcycle retail sales are permitted. (3254-10/94)

L-6 Only schools offering higher education curriculums are allowed with conditional use permit approval by the Planning Commission. No day care, elementary or secondary schools are permitted. (3254-10/94)

L-7 Recycling Operations as an accessory use are permitted; recycling operations as a primary use are allowed upon approval of a conditional use permit by the Zoning Administrator. (3254-10/94, 3708-6/05)

L-8 Allowed upon conditional use permit approval by the Planning Commission when a single building with a minimum area of 100,000 square feet is proposed on a site fronting an arterial. The primary tenant shall occupy a minimum 95% of the floor area and the remaining 5% may be occupied by secondary tenants. (3254-10/94)

L-9 Permitted if the space is 5,000 square feet or less; allowed by Neighborhood Notification pursuant to Chapter 241 if the space is over 5,000 square feet. (3254-10/94, 3523-2/02,3708-6/05)

L-10 RESERVED (3254-10/94,3523-2/02, 3724-02/06)

**IG AND IL Districts: Additional Provisions (continued)**

L-11 Allowed subject to the following requirements: (3378-2/98)

A. A proposed sex oriented business shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another sex oriented business. For purposes of these requirements, all distances shall be measured from the lot line of the proposed sex oriented business to the lot line of the sensitive use or the other sex oriented business. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan. (3378-2/98)

To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the sex oriented business is proposed which includes all the proposed parking and: (3378-2/98)

1. the lot line of any other sex oriented business within seven hundred fifty feet (750') of the lot line of the proposed sex oriented business; and (3378-2/98)

2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the proposed sex oriented business; and (3378-2/98)

3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed sex oriented business. (3378-2/98)

B. The front facade of the building, including the entrance and signage, shall not be visible from any major, primary or secondary arterial street as designated by the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive. (3378-2/98)

C. Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a sex oriented business zoning permit with the drawing described in subsection A, a technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed application, the Director shall determine if the application complies with the applicable development and performance standards of the

**IG AND IL Districts: Additional Provisions (continued)**

Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following: (3378-2/98)

1. Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures. (3378-2/98)

2. Chapter 233.08(b), Signs. Signage shall conform to the standards of the Huntington Beach Zoning and Subdivision Ordinance Code except

   a. that such signs shall contain no suggestive or graphic language, photographs, silhouettes, drawings, statues, monuments, sign shapes or sign projections, or other graphic representations, whether clothed or unclothed, including without limitation representations that depict "specified anatomical areas" or "specified sexual activities"; and (3378-2/98)

   b. only the smallest of the signs permitted under Chapter 233.08(b) shall be visible from any major, primary or secondary arterial street, such streets shall be those designated in the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive.

3. Compliance with Huntington Beach Municipal Code Chapter 5.70. (3378-2/98)

D. The Director shall grant or deny the application for a sex oriented business zoning permit for a sex oriented business. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review. (3378-2/98)

E. Ten (10) working days prior to submittal of an application for a sex oriented business zoning permit for Staff Review, the applicant shall: (i) cause notice of the application to be printed in a newspaper of general circulation; and (ii) give mailed notice of the application to property owners within one thousand (1000') feet of the proposed location of the sex oriented business; and the City of Huntington Beach, Department of Community Development by first class mail. (3378-2/98)

The notice of application shall include the following: (3378-2/98)

1. Name of applicant; (3378-2/98)

2. Location of proposed sex oriented business, including street address (if known) and/or lot and tract number; (3378-2/98)

3. Nature of the sex oriented business, including maximum height and square footage of the proposed development; (3378-2/98)

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4. The City Hall telephone number for the Department of Community Development to call for viewing plans; (3378-2/98)

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**IG AND IL Districts: Additional Provisions** (continued)

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5. The date by which any comments must be received in writing by the Department of Community Development. This date shall be ten (10) working days from staff review submittal; and (3378-2/98)

6. The address of the Department of Community Development. (3378-2/98)

F. A sex oriented business may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233. (3378-2/98)

G. A sex oriented business zoning permit shall become null and void one year after its date of approval unless: (3378-2/98)

1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or (3378-2/98)

2. The use is established. (3378-2/98)

H. The validity of a sex oriented business zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer. (3378-2/98)

I. A sex oriented business zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months. (3378-2/98)

L-12 For wireless communication facilities see section 230.96 Wireless Communication Facilities. All other communication facilities permitted. (3568-9/02)

(A) Repealed. (3254-10/94, 3708-6/05)

(B) A conditional use permit from the Zoning Administrator is required for any new use or enlargement of an existing use, or exterior alterations and additions for an existing use located within 150 feet of an R district. The Director may waive this requirement if there is no substantial change in the character of the use which would affect adjacent residential property in an R District. (3254-10/94)

(C) Accessory office uses incidental to a primary industrial use are limited to 10 percent of the floor area of the primary industrial use. (3254-10/94)

(D) Adjunct office and commercial space, not to exceed 25 percent of the floor area of the primary industrial use, is allowed with a conditional use permit from the Zoning Administrator, provided that it is intended primarily to serve employees of the industrial use, no exterior signs advertise the adjunct use, the adjunct use is physically separated from the primary industrial use, any retail sales are limited to goods manufactured on-site, and the primary industrial fronts on an arterial. (3254-10/94)

(E) See Section 241.22: Temporary Use Permits. (3254-10/94)

(F) See Chapter 236: Nonconforming Uses and Structures. (3254-10/94)

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**IG AND IL Districts: Additional Provisions (continued)**

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(H) Medical/dental offices, insurance brokerage offices, and real estate brokerage offices, except for on-site leasing offices, are not permitted in any I District. (3254-10/94)

Administrative, management, regional or headquarters offices for any permitted industrial use, which are not intended to serve the public, require a conditional use permit from the Zoning Administrator to occupy more than 10 percent of the total amount of space on the site of the industrial use. (3254-10/94)

(I) Automobile dismantling, storage and/or impound yards may be permitted subject to the approval of a conditional use permit by the Planning Commission and the following criteria: (3254-10/94)

(a) The site shall not be located within 660 feet of an R district. (3254-10/94)

(b) All special metal cutting and compacting equipment shall be completely screened from view. (3254-10/94)

(c) Storage yards shall be enclosed by a solid 6-inch concrete block or masonry wall not less than 6 feet in height and set back a minimum 10 feet from abutting streets with the entire setback area permanently landscaped and maintained. (3254-10/94)

(d) Items stacked in the storage yard shall not exceed the height of the screening walls or be visible from adjacent public streets. (3254-10/94)

(J) Limited to facilities serving workers employed on-site. (3254-10/94)

(K) Limited to: Single Room Occupancy uses (See Section 230.46). (3254-10/94,3708-6/05)

(L) Limited to Emergency Shelters. (3254-10/94)

(M) Development of vacant land and/or additions of 10,000 square feet or more in floor area; or additions equal to or greater than 50% of the existing building's floor area; or additions to buildings on sites located within 300 feet of a residential zone or use for a permitted use requires approval of a conditional use permit from the Zoning Administrator. The Planning Director may refer any proposed addition to the Zoning Administrator if the proposed addition has the potential to impact residents or tenants in the vicinity (e.g., increased noise, traffic). (3254-10/94, 3523-2/02)

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(N) Major outdoor operations require conditional use permit approval by the Planning Commission. Major outside operations include storage yards and uses utilizing more than 1/3 of the site for outdoor operation. (3254-10/94)

(O) See Section 230.40: Helicopter Takeoff and Landing Areas. (3254-10/94)

(P) See Section 230.44: Recycling Operations. (3254-10/94)

(Q) See Section 230.50: Indoor Swap Meets/Flea Markets (3254-10/94)

(R) See L-11(A) relating to locational restrictions. (3254-10/94, 3378-2/98)

**IG AND IL Districts: Additional Provisions (continued)**

(S) Non-amplified live entertainment greater than 300 feet from a residential zone or use shall be permitted without a conditional use permit. (3523-2/02)

(T) Subject to approval by the Police Department, Public Works Department, and Fire Department and the Planning Director. (3523-2/02)

(U) Neighborhood notification requirements when no entitlement required pursuant to Chapter 241. (3523-2/02, 3708-6/05)

~~L-13 Allowed subject to the following requirements: (3703-3/21/05)~~

~~A. A proposed medical marijuana dispensary shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another medical marijuana dispensary. For purposes of these requirements, all distances shall be measured from the lot line of the proposed medical marijuana dispensary to the lot line of the sensitive use or the other medical marijuana dispensary. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan. (3703-3/21/05)~~

~~To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the medical marijuana dispensary is proposed which includes all the proposed parking and: (3703-3/21/05)~~

~~1. the lot line of any other medical marijuana dispensary within seven hundred fifty feet (750') of the lot line of the medical marijuana dispensary; and (3703-3/21/05)~~

~~2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the medical marijuana dispensary; and (3703-3/21/05)~~

~~3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed medical marijuana dispensary. (3703-3/21/05)~~

~~B. Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a medical marijuana dispensary zoning permit with the drawing described in subsection A, a~~

~~technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed application, the Director shall determine if the application complies with the applicable development and performance standards of the Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following: Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures.~~ ~~(3703-3/21/05)~~

~~C. The Director shall grant or deny the application for a medical marijuana dispensary zoning permit for a medical marijuana dispensary. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review.~~ ~~(3703-3/21/05)~~

~~D. A medical marijuana dispensary may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233.~~ ~~(3703-3/21/05)~~

~~E. A medical marijuana dispensary zoning permit shall become null and void one year after its date of approval unless:~~ ~~(3703-3/21/05)~~

~~1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or~~ ~~(3703-3/21/05)~~

~~2. The use is established.~~ ~~(3703-3/21/05)~~

~~F. The validity of a medical marijuana dispensary zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer.~~ ~~(3703-3/21/05)~~

~~G. A medical marijuana dispensary zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months.~~ ~~(3703-3/21/05)~~

## 212.06 IG AND IL Districts: Development Standards

The following schedule prescribes development standards for the I Districts. The first two columns prescribe basic requirements for permitted and conditional uses in each district. Letters in parentheses in the "Additional Requirements" column reference requirements following the schedule or located elsewhere in this ordinance. In calculating the maximum gross floor area as defined in Chapter 203, the floor area ratio is calculated on the basis of net site area. Fractional numbers shall be rounded down to the nearest whole number. All required setbacks shall be measured from ultimate right-of-way and in accordance with definitions set forth in Chapter 203, Definitions. (3254-10/94)

| | | IG | IL | Additional Requirements |
|---|---|---|---|---|
| **Residential Development** | | | | (M) |
| **Nonresidential Development** | **D2 . 31** | | | |
| Minimum Lot Area (sq. ft.) | | 20,000 | 20,000 | (A)(B) (3708-06/05) |



ATTACHMENT NO. 3.21

| | | | |
|---|---|---|---|
| Minimum Lot Width (ft.) | 100 | 100 | (A)(B) |
| Minimum Setbacks | | | (A)(C) |
| Front (ft.) | 10;20 | 10;20 | (D) |
| Side (ft.) | 0 | 15 | (E)(F) (3708-06/05) |
| Street Side (ft.) | 10 | 10 | |
| Rear (ft.) | 0 | 0 | (E) (3708-06/05) |
| Maximum Height of Structures (ft.) | 40 | 40 | (G) |
| Maximum Floor Area Ratio (FAR) | 0.75 | 0.75 | |
| Minimum Site Landscaping (%) | 8 | 8 | (H)(I) |

| | IG | IL | Additional Requirements |
|---|---|---|---|
| Fences and Walls | See Section 230.88 | | |
| Off-Street Parking and Loading | See Chapter 231 | | (J) |
| Outdoor Facilities | See Section 230.74 | | |
| Screening of Mechanical Equipment | See Section 230.76 | | (K) |
| Refuse Storage Area | See Section 230.78 | | |
| Underground Utilities | See Chapter 17.64 | | |
| Performance Standards | See Section 230.82 | | (L) |
| Nonconforming Uses and Structures | See Chapter 236 | | |
| Signs | See Chapter 233 | | |

**IG AND IL Districts: Additional Development Standards**

(A) See Section 230.62: Building Site Required and Section 230.64: Development on Substandard Lots. (3254-10/94)

(B) Smaller lot dimensions for new parcels may be permitted by the Zoning Administrator with an approved development plan and tentative subdivision map. (3254-10/94)

(C) See Section 230.68: Building Projections into Yards and Required Open Space. Double-frontage lots shall provide front yards on each frontage. (3254-10/94)

(D) The minimum front setback shall 10 feet and the average setback 20 feet, except for parcels fronting on local streets where only a 10 foot setback is required. (3254-10/94)

All I Districts: An additional setback is required for buildings exceeding 25 feet in height (1 foot for each foot of height) and for buildings exceeding 150 feet in length (1 foot for each 10 feet of building length) up to a maximum setback of 30 feet. (3254-10/94)

(E) In all I districts, a 15-foot setback is required abutting an R district and no openings in buildings within 45 feet of an R district. (3254-10/94)

(F) A zero-side yard setback may be permitted in the I districts, but not abutting an R district, provided that a solid wall at the property line is constructed of maintenance-free masonry material and the opposite side yard is a minimum of 30 feet. (3254-10/94)

Exception. The Zoning Administrator or Planning Commission may approve a conditional use permit to allow a 15-foot interior side yards opposite a zero-side yard on one lot, if an abutting

side yard at least 15 feet wide is provided and access easements are recorded ensuring a minimum 30-foot separation between buildings. This 30-foot accessway must be maintained free of obstructions and open to the sky, and no opening for truck loading or unloading shall be permitted in the building face fronting on the accessway unless a 45-foot long striped areas is provided solely for loading and unloading entirely within the building. (3254-10/94)

(G) See Section 230.70: Measurement of Height. Within 45 feet of an R district, no building or structure shall exceed a height of 18 feet. (3254-10/94)

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**IG AND IL Districts: Additional Development Standards** (continued)

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(H) Planting Areas. Required front and street-side yards adjacent to a public right-of-way shall be planting areas except for necessary drives and walks. A 6-foot wide planting area shall be provided adjacent to an R district and contain one tree for each 25 lineal feet of planting area. (3254-10/94)

(I) See Chapter 232: Landscape Improvements. (3254-10/94)

(J) Truck or rail loading, dock facilities, and the doors for such facilities shall not be visible from or be located within 45 feet of an R district. (3254-10/94)

(K) See Section 230.80: Antennae. (3254-10/94)

(L) Noise. No new use shall be permitted, or exterior alterations and/or additions to an existing use allowed, within 150 feet of an R district until a report prepared by a California state-licensed acoustical engineer is approved by the Director. This report shall include recommended noise mitigation measures for the industrial use to ensure that noise levels will conform with Chapter 8.40 of the Municipal Code. The Director may waive this requirement for change of use or addition or exterior alteration to an existing use if it can be established that there had been no previous noise offense, that no outside activities will take place, or if adequate noise mitigation measures for the development are provided. (3254-10/94)

(M) Group residential or accessory residential uses shall be subject to standards for minimum setbacks and height of the RH District. (3254-10/94)

## 212.08 Review of Plans

All applications for new construction and exterior alterations and additions shall be submitted to the Planning Department for review. Discretionary review shall be required as follows: (3254-10/94,3708-6/05)

A. Zoning Administrator Review. Projects requiring a conditional use permit from the Zoning Administrator; projects including a zero-side yard exception; projects on substandard lots. (3254-10/94)

B. Design Review Board. Projects within redevelopment project areas and areas within 500 feet of a PS district; see Chapter 244. (3254-10/94)

C. Planning Commission. Projects requiring a conditional use permit from the Commission. (3254-10/94)

D2 . 33

D. Projects in the Coastal Zone. A Coastal Development Permit is required unless the project is exempt; see Chapter 245. (3254-10/94)

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# ATTACHMENT #4

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City of Huntington Beach Planning Department

# STAFF REPORT

**TO:** Planning Commission
**FROM:** Scott Hess, AICP, Director of Planning
**BY:** Ricky Ramos, Associate Planner RR
**DATE:** August 14, 2007

**SUBJECT:** **ZONING TEXT AMENDMENT NO. 07-003 (MEDICAL MARIJUANA DISPENSARIES)**

**APPLICANT:** City of Huntington Beach, 2000 Main St, Huntington Beach, CA 92648

**LOCATION:** Industrial Districts Citywide

## STATEMENT OF ISSUE:

- Zoning Text Amendment No. 07-003 request:
  - Amend Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to delete all references to medical marijuana dispensaries.

- Staff's Recommendation:
  Approve Zoning Text Amendment No. 07-003 based upon the following:
  - Zoning Text Amendment will allow the HBZSO to be consistent with federal law, which considers medical marijuana dispensaries illegal.
  - Approval of the request will not affect land use compatibility and will not change the development standards in the IG and IL zoning districts.

## RECOMMENDATION:

Motion to:

"Approve Zoning Text Amendment No. 07-003 with findings (Attachment No. 1) and forward to the City Council for adoption."

## ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

A. "Deny Zoning Text Amendment No. 07-003 with findings for denial."

B. "Continue Zoning Text Amendment No. 07-003 and direct staff accordingly." **D2 . 36**

ATTACHMENT NO. 4.1
B-2

**PROJECT PROPOSAL:**

Zoning Text Amendment No. 07-003 represents a request to amend Chapters 204 and 212 of the HBZSO to delete all references to medical marijuana dispensaries pursuant to Chapter 247 of the HBZSO.

This zoning text amendment is being initiated pursuant to an H-Item from Mayor Coerper, which was approved by the City Council in July 2005 (see Attachment No. 5).

In March 2005 the City Council adopted Ordinance No. 3703 permitting medical marijuana dispensaries in the IG (General Industrial) and IL (Limited Industrial) zoning districts of the city subject to additional requirements. A recent federal decision has affirmed once more that even where an individual appropriately adheres to California law under Proposition 215 (Compassionate Use Act), he or she may be prosecuted under federal law for the use, possession, or distribution of marijuana. Therefore, this zoning text amendment proposes to delete all references to medical marijuana dispensaries from the HBZSO (see Attachment Nos. 2.6-2.7, 2.13, 2.20-2.21) to be consistent with recent case law. Attachment No. 4 to this report is a Request for City Council Action from the City Attorney which provides more legal background information relating to the request.

**ISSUES:**

***Subject Property And Surrounding Land Use, Zoning And General Plan Designations:***

| LOCATION | GENERAL PLAN | ZONING | LAND USE |
|---|---|---|---|
| Citywide | I (Industrial) | IG (General Industrial), IL (Limited Industrial) | Industrial |

The proposed zoning text amendment affects properties with a General Plan Land Use Map designation of Industrial. The proposal is consistent with the Industrial designation and the goals and objectives of the City's General Plan by deleting all references to medical marijuana dispensaries while continuing to allow typical industrial uses such as manufacturing and warehousing.

***Zoning Compliance:*** Not applicable.

***Urban Design Guidelines Conformance:*** Not applicable.

***Environmental Status:***

The request is categorically exempt pursuant to City Council Resolution No. 4501, Class 20 which states that minor amendments to zoning ordinances that do not change the development standards, intensity, or density of such districts are exempt from further environmental review.

***Coastal Status:*** The request will require a Local Coastal Program Amendment certified by the California Coastal Commission.

D2 . 37

ATTACHMENT NO. 4.2

***Redevelopment Status***: Not applicable.

***Design Review Board***: Not applicable.

***Subdivision Committee***: Not applicable.

***Other Departments Concerns and Requirements:*** Not applicable.

***Public Notification:***

Legal notice was published in the Huntington Beach/Fountain Valley Independent on August 2, 2007, and notices were sent to individuals/organizations requesting notification (Planning Department's Notification Matrix). As of August 7, 2007 no communication supporting or opposing the request has been received.

***Application Processing Dates:***

| DATE OF COMPLETE APPLICATION: | MANDATORY PROCESSING DATE(S): |
|---|---|
| Not applicable | Legislative Action – Not Applicable |

**ANALYSIS:**

The request is a housekeeping item and presents minimal planning issues. Approval of the request will not affect land use compatibility and will not change the development standards in the IG and IL zoning districts. Staff recommends approval because it will bring the HBZSO into conformance with federal law, which considers medical marijuana dispensaries illegal.

**ATTACHMENTS:**

~~1. Suggested Findings for Approval – ZTA No. 07-003~~
~~2. Legislative Draft of Chapters 204 and 212 of the HBZSO~~
~~3. Ordinance Amending Chapters 204 and 212 of the HBZSO~~
~~4. Request for City Council Action from City Attorney~~
~~5. Minutes of July 18, 2005 City Council Meeting~~

SH:MBB:RR:sh

**D2 . 38**

ATTACHMENT NO. 4.3

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# ATTACHMENT #5

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|---|---|
| Council/Agency Meeting Held:_____<br>Deferred/Continued to:_____<br>☐ Approved ☐ Conditionally Approved ☐ Denied | _____<br>City Clerk's Signature |
| Council Meeting Date: | Department ID Number: CA 07-26 |

# CITY OF HUNTINGTON BEACH
# REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Jennifer McGrath, City Attorney

**PREPARED BY:** Jennifer McGrath, City Attorney

**SUBJECT:** Adoption revising Zoning Code Chapters 204 and 212 as to medical marijuana dispensaries

**Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)**

**Statement of Issue:** Huntington Beach Zoning and Subdivision Ordinance Chapters 202 and 212 currently permit medical marijuana dispensaries within the City. In light of recent court rulings, the law is now clear that despite California's adoption of Proposition 215, the medical marijuana initiative, the federal prohibition against the possession, use, and distribution of marijuana applies to persons possessing, using, and distributing marijuana even for medicinal purposes. Consequently, the operation of medical marijuana dispensaries violates federal law and, as such, this use should not be permitted in the City of Huntington Beach. This ordinance will revise the Zoning and Subdivision Ordinance to remove references to medical marijuana dispensaries.

**Funding Source:** No funds are required

**Recommended Action: Motion to:** Adopt Ordinance No. _____ An Ordinance of the City of Huntington Beach Amending Chapters 204 and 212 of the Zoning Code Pertaining to Medical Marijuana Dispensaries.

**Alternative Action(s):** Do not adopt Ordinance No. _____.



**Analysis:** In March of 2005, the City Council adopted Ordinance No. 3703, permitting medical marijuana dispensaries in specified locations within the City. At the time of adoption of the ordinance, a Supreme Court decision was pending in a case that challenged the applicability of Proposition 215 (the Compassionate Use Act) as it relates to the Federal Controlled Substances Act ("FCSA"). In June of 2005, the United States Supreme Court issued its opinion in this case, *Gonzales v. Raich* (2005) 545 U.S. 1, upholding the enforcement of the FCSA. The Court held that Congress could regulate and even ban the use of marijuana under the Commerce Clause. In other words, the possession and

ATTACHMENT NO. 5-1

distribution of marijuana is still a federal crime. However, at this time, the *Raich* case had been remanded to the Ninth Circuit to address the plaintiff's remaining claims that she was entitled to possess and use medical marijuana based on, amongst other things, rights afforded to her under the United States Constitution. This eagerly anticipated decision, which was just filed on March 14, 2007, held that the application of the FCSA to medical marijuana growers and users did not violate substantive due process guarantees, as the use of medical marijuana was not a fundamental right. It also held that the plaintiff failed to demonstrate a likelihood of success on her claim that the FCSA, as applied to prevent the use of marijuana under California's Compassionate Use Act, violated the Tenth Amendment. (*Gonzales v. Raich*, 2007 WL 754759, 12.)

This recent federal decision has affirmed once more that even where an individual appropriately adheres to California law under Proposition 215, he or she may be prosecuted under federal law for the use, possession, or distribution of marijuana. At this time, only Congressional action can resolve the conflict between state and federal law regarding the use of marijuana for medicinal purposes. Not only do these federal decisions place law enforcement in a precarious position between enforcement of state and federal law, the City itself is in an untenable position based on its ordinance permitting medical marijuana dispensaries.

Permitting these dispensaries has implications under the FCSA as well as certain provisions of the Huntington Beach Municipal Code ("HBMC"). HBZSO Chapters 204 and 212 allow for medical marijuana dispensaries uses subject to specific location criteria. However, based on the *Raich* decisions, the issuance of a zoning permit for a medical marijuana dispensary would be considered the issuance of a permit for an illegal use. Further, under HBMC Section 5.04.050, the City is prohibited from issuing a business license for a use that is illegal under state or federal law.

Lastly, the City has recently taken the position that it should not be required to violate federal law by returning medical marijuana to criminal defendants. The City has recently successfully challenged two court orders that required the City to return medical marijuana to criminal defendants. It is also the Real Party in a case on this same issue that is currently pending before the Appellate Court, *Spray v. Superior Court*, and has provided *amicus curiae* support to the City of Garden Grove in *Spray's* companion case, *City of Garden Grove v. Superior Court*. Permitting medical marijuana dispensaries to operate within the City is inconsistent with the City's position in these cases.

It should be noted that some cities that do not permit the operation of medical marijuana dispensaries, such as Dublin, Fremont, and Auburn, have elected to expressly prohibit this type of use through the adoption of municipal codes specifically tailored towards medical marijuana dispensaries. Although the City may adopt a similar ordinance if it so chooses, it is the City's standard practice to regulate by permitting uses, rather than by express prohibition. Even without an ordinance expressly prohibiting the operation of medical marijuana dispensaries, the City can regulate this illegal use under HBMC 5.04.050, its business license ordinance.



ATTACHMENT NO. 5-2

**Strategic Plan Goal:** Preserve the quality of our neighborhoods, maintain open space, and provide for the preservation of historic neighborhoods.

**Environmental Status:** N/A

**Attachment(s):**

| City Clerk's Page Number | No. | Description |
|---|---|---|
| | 1. | ~~An Ordinance of the City Council of the City of Huntington Beach Amending Zoning Code Chapters 202 and 212 Pertaining to Medical Marijuana Dispensaries.~~ |
| | 2. | ~~Legislative Drafts of Zoning Code Chapters 202 and 212~~. |

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# ATTACHMENT #6

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A motion was made by Coerper, second Bohr to:

1. **OPPOSE – HR 2726 (Sessions)** Preserving Innovation in Telecom Act of 2005 as Introduced

**and**

2. **OPPOSE – SB 399 (Escutia)** Health Services – 3rd Party Liability as amended on 06/21/05

**and**

3. **OPPOSE – SB 1059 (Escutia)** Electric Transmission Corridors – as amended on 05/27/05

The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
NOES: None
ABSENT: None

A motion was made by Cook, second Bohr to **SUPPORT – SB 1 (Murray)** Energy: Renewable Sources (the Million Solar Roofs Initiative as amended on 06/23/05.) The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Hardy, Bohr, Cook
NOES: Sullivan, Green
ABSENT: None

**(City Council) Directed Staff to Prepare an Ordinance Amending Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance to Prohibit Medical Marijuana Dispensaries (Ordinance 3703 was Adopted March 21, 2005)** (120.90)

The City Council considered a communication from Councilmember Coerper transmitting the following **Statement of Issue:** Earlier this year there were several meetings with city staff and members of the City Council exploring whether or not the city of Huntington Beach should permit medical marijuana dispensaries in the city of Huntington Beach consistent with the Compassionate Use Act (Proposition 215). In March of this year, Council adopted Ordinance No. 3703, which permits medical marijuana dispensaries in specified locations. At the time of adoption of the ordinance, a Supreme Court decision was still pending in a case that challenged the applicability of Proposition 215 as it relates to the Federal Controlled Substances Act.

In June 2005, the Supreme Court of the United States issued its opinion in *Gonzalez v. Raich*, which upholds enforcement of the Federal Controlled Substances Act. In other words, possession of marijuana is still a federal crime.

In view of this decision of the Supreme Court, the city should process a zoning text amendment to disallow for uses that are in violation of federal law. For the city to continue to allow medical marijuana dispensaries could be viewed by federal authorities as aiding or abetting the commission of a felony or conspiracy to violate the law.



ATTACHMENT NO. 6

Councilmember Coerper reported orally and asked for an update on the ordinance. City Attorney Jennifer McGrath and Police Chief Ken Small reported on the local ordinance as it relates to state and federal legislation.

Council discussion followed regarding the state initiative process and the process of modifying the City's zoning code by ordinance.

Councilmember Cook stated reasons for opposing the recommended action, including the benefits offered by the medicine and faulty reasoning to prohibit its use.

Councilmember Hansen stated his support for the recommended action, citing unintended results of Proposition 215.

Councilmember Bohr inquired if any applications for dispensaries were currently in process. Planning Director Howard Zelefsky responded, stating that there are currently no applications pending, and that one application was denied.

Mayor Hardy stated reasons for opposing the recommended action, including the uses of marijuana as a medicine and her opposition to banning of medicines in Huntington Beach.

A motion was made by Coerper, second Green to direct staff to prepare an ordinance amending Chapters 204.10 and 212.04 to prohibit medical marijuana dispensaries in the city of Huntington Beach. The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Green
NOES: Hardy, Bohr, Cook
ABSENT: None

**Adjournment – City Council/Redevelopment Agency**

Mayor Hardy adjourned the regular meetings of the City Council/Redevelopment Agency of the City of Huntington Beach at 8:55 p.m. to Monday, August 1, 2005, at 4:00 p.m., in Room B-8 Civic Center, 2000 Main Street Huntington Beach, California.

_____
City Clerk and ex-officio Clerk of the City Council of the City of Huntington Beach and Clerk of the Redevelopment Agency of the City of Huntington Beach, California

ATTEST:

_____
City Clerk-Clerk

_____
Mayor-Chair



ATTACHMENT NO. D-2

# ATTACHMENT #7

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## Ross, Rebecca

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 9:10 PM
**To:** Ross, Rebecca
**Subject:** Fw: dispensaries

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: jwatson51@cox.net <jwatson51@cox.net>
To: Flynn, Joan
Sent: Mon Aug 13 18:38:21 2007
Subject: dispensaries

dear joan ,
i'm just one more patient who does not want to go back to obtaining medicine from the street . i'd rather feel safe and have my tax dollars do some good . in fact smoking pot will never go away and since the bottom line politically in this wonderful nation is money ,it's just a matter of time before those billions of dollars in tax revenue will finally get noticed and politicians who are even against it will cave and begin touting the overwhelming evidence that it is medicine that is helpful . wouldn't it be great if more people did things for the right reason rather than the popular reason . thanks for reading this . j wayne watson age 59

**D2 . 47**



ATTACHMENT NO. 1

## Ross, Rebecca

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 9:08 PM
**To:** Ross, Rebecca
**Subject:** Fw: Marijuana dispensaries

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: Ronald Steven Mintz <taclawcom@sbcglobal.net>
To: Flynn, Joan
Sent: Mon Aug 13 18:39:31 2007
Subject: Marijuana dispensaries

It will be interesting to observe the promulgation of marijuana dispensaries within your jurisdiction and compare the same with the Prohibition-era phenomena.

Ronald Steven Mintz, Esq.
General Counsel
TACTICAL LAW COMMAND
(Not a Govt. Agency)



ATTACHMENT NO. 7.2

**Ross, Rebecca**

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 9:09 PM
**To:** Ross, Rebecca
**Subject:** Fw: Medical Marijuana Dispensaries

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: susiland@aol.com <susiland@aol.com>
To: Flynn, Joan
Sent: Mon Aug 13 18:47:22 2007
Subject: Medical Marijuana Dispensaries

City Clerk:
Please count me among the many constituents in Huntington Beach who favor allowing the lawful dispensation of medical marijuana. I'll be watching the vote, to see who supports this issue and who is being an old stick-in-the-mud.

Susan



D2 . 49



ATTACHMENT NO. 7.3

**Ross, Rebecca**

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 9:09 PM
**To:** Ross, Rebecca
**Subject:** Fw: Please Regulate, Do Not Ban Medical Marijuana Co-Ops

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: Geogeogeo215@aol.com <Geogeogeo215@aol.com>
To: Fikes, Cathy; Flynn, Joan
Cc: Geogeogeo215@aol.com <Geogeogeo215@aol.com>
Sent: Mon Aug 13 19:34:15 2007
Subject: Please Regulate, Do Not Ban Medical Marijuana Co-Ops

Dear Huntington Beach City Council Members and Joan Flynn,

I moved to Huntington Beach in 1982, paid taxes, and voted every year since then.

As a long term resident, I hereby request that you regulate but not ban medical marijuana cooperatives. These establishments provide a public service and are supported by the voters who pay your salaries.

Thank you for your consideration,





ATTACHMENT NO. 7.4

## Ross, Rebecca

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 9:10 PM
**To:** Ross, Rebecca
**Subject:** Fw: medical pot dispensaries

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: David <dwjames@socal.rr.com>
To: Flynn, Joan
Sent: Mon Aug 13 20:29:31 2007
Subject: medical pot dispensaries

Dear City Clerk Flynn:

I urge you as a long term resident of Huntington Beach to support the establishment of medical pot dispensaries in Huntington Beach. I know many medical cannabis patients and the depiction of these people by the federal authorities as drug dealers I find absolutely disgusting. My wife has found medical cannabis very helpful in overcoming the extreme pain caused by her experience with flesh eating bacteria and a more recent amputation of her lower left leg. If she were to rely on the prescription drug she had available she would be a zombie today.
Instead she has formed a support group for people affected by the disease and is currently helping the 600 people (average group count)in dealing with the challenges posed by the disease.

I urge you to look at the scientific evidence of the many beneficial uses of medical cannabis.

David W James

**D2 . 51**



ATTACHMENT NO. 15

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**Flynn, Joan**

**From:** WBritt420@aol.com
**Sent:** Tuesday, August 14, 2007 11:13 AM
**To:** Flynn, Joan
**Cc:** Fikes, Cathy
**Subject:** Letter to the City Council regarding the Med Pot Dispensaries Public Hearing

Dear City Council Members:

As an advocate for the disabled and a qualified medical cannabis patient I ask that you consider the following before you make a decision about banning medical cannabis in Huntington Beach:

10 years ago the people voted for Prop. 215 which RECOMMENDED that the state set up a safe and affordable distribution system. No such system has been set up.

The US Constitution tells us that if the government refuses to enact law put in place by the people of the US, it is the duty of US citizens to enact those laws.

The California Constitution Article 3 Section 3.5*, tells us that when state and federal law conflict, state officials must follow state law regardless of federal law.

The California Supreme Court ruled in People Vs Mower that Medical Cannabis should be treated like any other medicine or medical procedure.

Patients are suffering in Huntington Beach and need safe access to their medicine. Without safe access they must buy their medicine from criminals on the street.

Tremendous amounts of money is being wasted prosecuting qualified patients in HB. This money could be spent elsewhere on more pressing and important matters.

It may be a controversial issue, but patients are suffering needlessly and need your help. Please consider those in pain as you make your decision.

Thank you,

William Britt, Exec. Dir,
Association of Patient Advocates

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*California Constitution Article 3 Section 3.5

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(b) To declare a statute unconstitutional;

**(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations. (1)**



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ATTACHMENT NO. 7-6

According to 1979 Attorney General George Deukmejian's Analysis: "In common parlance, the term 'administrative' pertains to the executive branch of government. In its stricter connotation, an 'administrative agency' is a governmental body, other than a court or legislature, invested with power to prescribe rules or regulations or to adjudicate private rights and obligations."(2)

Since no appellate court has declared enforcement of HS 11362.5 either unconstitutional or prohibited by federal law,(3) no California state agency may refuse to enforce HS 11362.5 on the basis that federal law prohibits actions protected under the California statute.

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1. 1. Constitution of California, Art.3 Section 3.5.

2. 2. Attorney General Opinions, 62 Ops Atty Gen 788 (Provisions of Cal. const. art. III, ¤ 3.5 apply to the Alcoholic Beverage Control appeals Board in the exercise of its authority under Cal. Const., art. XX, section 22, and Bus. & Prof. code. sections 23080 through 23087).

3. 3. See U.S. v Oakland Cannabis Buyers Cooperative, U.S. Supreme Court, No. 00151, May 14, 2001, Concurring Opinion, at the first paragraph; footnote 1; and the fifth paragraph, which reads in part: "...By passing Proposition 215, California voters have decided that seriously ill patients and their primary caregivers should be exempt from prosecution under state laws for cultivating and possessing marijuana if the patients physician recommends using the drug for treatment. This case does not call upon the Court to deprive all such patients of the benefit of the necessity defense to federal prosecution, when the case itself does not involve any such patients."

---

## Flynn, Joan

**From:** Ernst Ghermann [EGhermann@dslExtreme.com]
**Sent:** Tuesday, August 14, 2007 3:00 PM
**To:** Flynn, Joan
**Subject:** Med Pot Dispensaries

To Joan Flyn
City Clerk, Huntington Beach
Re: Med Pot Dispensaries public hearing.

I currently live in the San Fernando Valley, but I am planning to move to the Huntington Landmark senior community next year. While currently healthy at age 72, I can foresee the possibility of future health issues that might be alleviated with marijuana dispensation. Consequently I urge you not to deny ill people access to this potentially pain relieving medication.
Ernst Ghermann



ATTACHMENT NO. 7-8

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**Flynn, Joan**

**From:** Bruce Cohen [brucedcohen2002@yahoo.com]
**Sent:** Thursday, August 09, 2007 11:50 PM
**To:** Flynn, Joan
**Cc:** Fikes, Cathy
**Subject:** Dear City Council and Clerk...

Norm Westwell is at it again.

He just broadcast an email letter accross the state of California, asking people to flood you in support of the Medical Marijuana Dispensaries.

While I am in favor of said dispensaries, I am also in favor of honesty and accuracy.

I suggest you require all email in support to have the name and address (and city!) of those writing for the email to be considered.

Yours,

Bruce Cohen
www.GetBruce.com

***Norm <normw@modernpublic.com>*** wrote:

> To: ca-liberty@yahoogroups.com
> From: "Norm" <normw@modernpublic.com>
> Date: Fri, 10 Aug 2007 05:05:19 -0000
> Subject: [ca-liberty] The Huntington Beach Planning Commission will be holding
>
> The Huntington Beach Planning Commission will be holding
> Holding a public hearing on 8/14/07 at 7pm on the issue of
> Banning medical marijuana dispensaries in HB.
>
> This could go either way.
>
> Your email could make the difference.
>
> HB does not ask for and does not require your address.
> The more communications they receive the better.
>
> Here is where to send them:
>
> To be included in the public record your email should be sent to Joan Flynn the city Clerk whose address is:



D2 . 55

ATTACHMENT NO. 19

jflynn@surfcity-hb.org
Address this letter to the City Clerk regarding the Med Pot Dispensaries public hearing.

In addition it should also be sent to the HB City Council
Email to this address will be re-directed to all 7 Huntington Beach Council Members:
cfikes@surfcity-hb.org
Address this letter to: Dear City Council Members.

P.S. Providing your address is unnecessary and only serves to identify out of town senders.
It is recommended to NOT include your address information.
It IS recommended to flood the city clerk with emails in favor of your position.



Messages in this topic (1) **Reply** (via web post) | **Start a new topic**

Messages | Links | Database | Polls | Calendar

## Ross, Rebecca

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 7:50 AM
**To:** Ross, Rebecca
**Subject:** Fw: Please do not ban medical cannabis dispensaries in Huntington Beach!

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: Starchild <sfdreamer@earthlink.net>
To: Flynn, Joan
Cc: Starchild <RealReform@earthlink.net>
Sent: Fri Aug 10 20:27:34 2007
Subject: Please do not ban medical cannabis dispensaries in Huntington Beach!

Make no mistake about it, restricting the ability to operate medical cannabis dispensaries is tantamount to supporting the "War on Drugs." And if you don't yet understand how that war has been a total failure, please consider the following info just on the "War on Marijuana":

BAD NEWS
by James W. Harris

FBI: Marijuana Arrests Reach Shameful New Record

The War Against Marijuana is at all-time high.

Police arrested an estimated 771,608 persons for marijuana violations in 2004, according to the FBI's annual Uniform Crime Report, released October 17.

That total is the highest ever recorded -- a shameful new record.

And a closer look at this figure reveals some startling facts about the Drug War.

* There is, on average, one marijuana arrest every 41 seconds.

* Since 1993, marijuana arrests have more than doubled.

* The number of marijuana arrests far exceeded the total number of arrests in the U.S. for *all violent crimes combined*, including murder, manslaughter, forcible rape, robbery and aggravated assault.

* Marijuana arrests account for 44.2 percent of all drug arrests in the United States. (Clearly, the War on Drugs is first and foremost a war on casual marijuana use.)

* Of those arrested, 89 percent -- some 684,319 Americans -- were charged with *possession only*.

* The remaining 11 percent were charged with "sale/manufacture," a category that includes *all* cultivation offenses -- even those where the marijuana was being grown for personal or medical use.

* Over 8 million Americans have been arrested on marijuana charges in the past decade -- a far greater number than the entire populations of Alaska, Delaware, the District of Columbia, Montana, North Dakota, South Dakota, Vermont, and Wyoming... combined.

"It's important to remember that each of these statistics represents a human being, and in many cases, a preventable tragedy," said Aaron Houston, director of government relations for the Marijuana Policy Project in Washington, D.C. "One of those marijuana arrests in 2004 was Jonathan Magbie, a quadriplegic medical marijuana patient who died in the Washington, D.C., city jail while serving a 10-day sentence for marijuana possession."



ATTACHMENT NO. 7-11

"These numbers belie the myth that police do not target and arrest minor marijuana offenders," said Allen St. Pierre, Executive Director of NORML. "This effort is a tremendous waste of criminal justice resources that diverts law enforcement personnel away from focusing on serious and violent crime, including the war on terrorism."

Sources: Marijuana Policy Project:
http://www.mpp.org/releases/nr20051017.html
NORML:
http://www.mapinc.org/norml/v05/n1649/a01.htm?134

Please don't cater to a few NIMBYs. "Planning" should not mean "banning," and the Planning Commission should not become a vehicle for tyranny by the majority or by an aggressive NIMBY minority.

Sincerely,
<<< starchild >>>

P.S. - Please include my comments in the public record -- thank you!

## Ross, Rebecca

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 7:49 AM
**To:** Ross, Rebecca
**Subject:** Fw: More Heads up: Norm 'Worm' Westwell is at it again...

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: Bruce Cohen <brucedcohen2002@yahoo.com>
To: Flynn, Joan
Sent: Sat Aug 11 13:49:37 2007
Subject: More Heads up: Norm 'Worm' Westwell is at it again...

Norm sent this email to at least 6 discussion groups, that I know of. I'm sure there were more.

Note the comment at the bottom.

I'm forwarding this one to you to show how he's soliciting mail from folks for sure out of the area.
(Libertarian Party of Los Angeles County = LPLAC)

I wrote an article about this last time he did it, regarding the Poseiden water project.

It was entitled 'Cheaters Never Prosper'.

It's still available on the Internet:
http://libertarianactivism.com/writings/libertarian-morality.shtml

Feel free to call.
I can also speak at your meetings...

Thank you,

Bruce Cohen
949 813-8001

Norm <normw@modernpublic.com> wrote:

> To: LPLAC@yahoogroups.com
> From: "Norm" <normw@modernpublic.com>
> Date: Fri, 10 Aug 2007 05:09:05 -0000
> Subject: [LPLAC] Action Alert: HB to consider banning med pot dispensaries
>
> The Huntington Beach Planning Commission will be holding
> a public hearing on 8/14/07 at 7pm on the issue of
> Banning medical marijuana dispensaries in HB.
>
> This could go either way.
>
> Your email could make the difference.
>
> HB does not ask for and does not require your address.
> The more communications they receive the better.
>
> Here is where to send them:

**D2 . 59**



ATTACHMENT NO. 7-13

To be included in the public record your email should be sent to Joan Flynn the city Clerk whose address is:
jflynn@surfcity-hb.org <mailto:jflynn%40surfcity-hb.org>
Address this letter to the City Clerk regarding the Med Pot Dispensaries public hearing.

In addition it should also be sent to the HB City Council
Email to this address will be re-directed to all 7 Huntington Beach Council Members:
cfikes@surfcity-hb.org <mailto:cfikes%40surfcity-hb.org>
Address this letter to: Dear City Council Members.

P.S. Providing your address is unnecessary and only serves to identify out of town senders.
It is recommended to NOT include your address information.
It IS recommended to flood the city clerk with emails in favor of your position.





D2 . 60

ATTACHMENT NO. 7.14

=Los+angeles+county+traffic+schools&w4=Los+angeles+county+appraiser&w5
=Los+angeles+county+property+appraiser&c=5&s=187&g=2&.sig=mG2IgiPzi3mUXLZ0fhh8Ug>
* Los angeles county traffic schools <http://groups.yahoo.com/gads;
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* Los angeles county appraiser <http://groups.yahoo.com/gads;
_ylc=X3oDMTJkYTYxM25tBF9TAzk3MzU5NzE0BF9wAzQEZ3JwSWQDMTE5MjI2MDcEZ3Jwc3BJZAMxNzA1NDQ0NjA3B
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* Los angeles county property appraiser <http://groups.yahoo.com/gads;
_ylc=X3oDMTJkb2x2am9nBF9TAzk3MzU5NzE0BF9wAzUEZ3JwSWQDMTE5MjI2MDcEZ3Jwc3BJZAMxNzA1NDQ0NjA3B
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Yahoo! News
Fashion News <http://us.ard.yahoo.com/SIG=12j3j7i0g/M=
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fashion and style?
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1488/stime=1186802434/nc1=3848621/nc2=3848641/nc3=4763757>
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Park yourself in front of a world of choices in alternative vehicles.
Visit the Yahoo! Auto Green Center. <http://us.rd.yahoo.com/evt=48246/
*http://autos.yahoo.com/green_center/;
_ylc=X3oDMTE5cDF2bXZzBF9TAzk3MTA3MDc2BHNlYwNtYWlsdGFncwRzbGsDZ3J1ZW4tY2VudGVy>

**D2. 61**



ATTACHMENT NO. 7-15

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## Ross, Rebecca

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 7:49 AM
**To:** Ross, Rebecca
**Subject:** Fw: mmj

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: Dominated4Life@aol.com <Dominated4Life@aol.com>
To: Flynn, Joan
Sent: Sat Aug 11 19:30:41 2007
Subject: mmj

Please do not close down medical marijuana dispensaries in HB.

Patients, not criminals.

- Zach Risner
(614) 374-5792



D2 . 62



ATTACHMENT NO. 7:10

## Ross, Rebecca

**From:** Flynn, Joan
**Sent:** Monday, August 13, 2007 7:49 AM
**To:** Ross, Rebecca
**Subject:** Fw: Dear City Council Members

Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: R Givens <rlgivens@comcast.net>
To: Flynn, Joan
Sent: Mon Aug 13 02:45:31 2007
Subject: Dear City Council Members

NO MORE REEFER MADNESS

Dear City Council Members,

Before banning medical marijuana dispensaries consider the basis for marijuana prohibition-

"Marihuana influences Negroes to look at white people in the eye, step on white men's shadows and look at a white woman twice." (Hearst newspapers nationwide, 1934)

"There are 100,000 total marijuana smokers in the U.S., and most are Negroes, Hispanics, Filipinos and entertainers. Their Satanic music, jazz and swing, result from marijuana use. This marijuana can cause white women to seek sexual relations with Negroes, entertainers and any others."

"The primary reason to outlaw marijuana is its effect on the degenerate races."

"Marijuana is an addictive drug which produces in its users insanity, criminality and death."

"Marijuana is the most violence-causing drug in the history of mankind."

"[Smoking] one [marihuana] cigarette might develop a homicidal mania, probably to kill his brother." (see US Government Propaganda To Outlaw Marijuana - http://www.druglibrary.org/schaffer/hemp/taxact/t3.htm)

Why on earth would any sane person align themselves with such nonsense.

Particularly when the victims of a ban are the sick and dying. Preventing people from getting medical treatment was a Nazi tactic. Don't join the anti-human DEA crusade against seriously ill people.
Ralph Givens

**Flynn, Joan**

**From:** Craig Johnson [thinkcj@hotmail.com]
**Sent:** Monday, August 13, 2007 1:56 PM
**To:** Flynn, Joan
**Subject:** mmj dispensarys

To whom it may concern.

Prop. 215 and S.B. 420 is set up to encourage local civic leaders to establish safe-access for mmj patients in their community's.

Dispensarys serve that need, what alternative has your city proposed?

Vote No on the moratorium and set up regulations to allow mmj disp.

Thank you

Craig Johnson





ATTACHMENT NO. 7-18

**Flynn, Joan**

**From:** b1joy2c@yahoo.com
**Sent:** Monday, August 13, 2007 1:58 PM
**To:** Flynn, Joan
**Subject:** Compassionate Care

pharmacies should stay open and serve the community. Making ill people drive out of the area makes no sense. Please serve compassion on your plate of offerings.

Joy L

Miles of Smiles!

**D2 . 65**

ATTACHMENT NO. 7.19

8/13/2007

## Flynn, Joan

**From:** Norman [njl433@yahoo.com]
**Sent:** Monday, August 13, 2007 2:21 PM
**To:** Flynn, Joan
**Subject:** No Ban of Medical Cannabis Dispensaries!!!!

I am a citizen of Huntington Beach and California.

Medical Cannabis is legal in California. We the people voted for this.

You represent the people of Huntington Beach.

Please allow us to get our medication which is consistent with the laws of our state which you were elected to uphold.

Thank you,

Norman Lepoff

D2 . 66



ATTACHMENT NO. 1.20

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## Ramos, Ricky

**From:** Lugar, Robin
**Sent:** Wednesday, August 15, 2007 3:02 PM
**To:** Fikes, Cathy; Ramos, Ricky
**Subject:** FW: about last nights meeting

For distribution to Council and Planning Commission.

-----Original Message-----
From: Marla James [mailto:ghostlady@socal.rr.com]
Sent: Wednesday, August 15, 2007 11:59 AM
To: city.clerk@surfcity-hb.org
Subject: about last nights meeting

Please CC to all commissioners:
I would like to applaud your team for the decision you made last night on medical marijuana to get more information. I am a medical marijuana patient and currently have to get my medicine underground. I am an amputee in a wheelchair (I had flesh eating bacteria) and use it for pain management instead of being on oxycontin the rest of my life. I am a 46 year old Huntington Beach resident (92649). A dispensary in our city would make me feel safe getting my medicine. It would also bring a lot of money into our city as we, as patients are happy to pay taxes on our medicine.
I would like to show you via a website from the city of Oakland, (a city with four dispensaries running legally). The money from dispensaries could help with the funding to repair our infrastructure.

here is a report from the Oakland City Manager's Office on the operation of their dispensaries:
http://clerkwebsvr1.oaklandnet.com/attachments/15637.pdf

Their findings were 100% positive, here are some excerpts:

"Oakland's four (4) permitted cannabis dispensaries employ a total of ninety-nine (99) people. An increase in the number of permitted dispensaries would increase employment."

" According to the Business Tax Certification office, the dispensaries reported, and paid tax on, gross receipts of $5,461,824.14 for the
2005 calendar year. Although data on individual businesses is not available to staff, this amount was presumably reported by only the two dispensaries that operated the entire year. The previous year, when four dispensaries were in operation, gross receipts reported were $16,422,722.05. Four dispensaries are again in operation, and it is likely that, by 2007, there will be a substantial increase in taxes paid to the City."

"Oakland's permitted dispensaries continue to function without excessive drain on police resources. Three of the four dispensaries provide additional social services to their patients and the surrounding community."

I am a member of Orange County NORML (national oraganization to reform marijuana laws) and ASA (Americans for Safe Access).
If you need copies of prop 215 or SB420 I would be happy to send those to you too.
You mentioned the DEA and property forfeiture last night, I work with the people in LA and please know that people who own dispensaries know this could be a risk. Many own their own buildings. Even though the letters went out to 100 landlords of the over 300 dispensaries in Los Angeles. None have lost property.

Most people who own dispensaries do so by the rules. They verify that a patient is real with a known doctor. Remember a dispensary is like a pharmacy. They do not diagnose or question a doctor, they just fill a recommendation. The owners of the dispensary is considered a caregiver per SB420. Some dispensaries have patient activities and social services too.
Just to let you know below is a list of doctors who will recommend medical marijuana.



ATTACHMENT NO. 7:21

These doctors are MDs and do require medical records.
My doctors are Dr Sullivan and Doctor Gitter in Lake Forest.

* Dr. Claudia Jensen, 8 N. Fir St Ventura; and 34281 Doheny Park Rd 7538 Capistrano Beach (805) 648-LOVE (5683).
* Madison Burbank Medical Center (Dr. McBeth) 678 S. Indian Hill Blvd #302, Claremont (909) 626-9131.
* Natural Care for Wellness (Dr. Cristal Dawn Speller), Ventura/Santa Barbara/San Fernando Valley (310) 975-5832 naturalcare4wellness.com
* Dr. William Eidelman, 1654 N. Cahuenga Blvd, Los Angeles (323) 463-3295 www.dreidelman.com
* CC for Wellness: Dr. Tom Zaharakis & Dr. Eve H. Elting Malibu, North Hollywood, Long Beach 1- 877-CCW-4201 www.cc4wellness.com
* Dr. James Eisenberg, Santa Monica 877-468-5874
* Dr. Christine Paoletti, 1304-15th St #405, Santa Monica 310-319-6116 www.cannadvise.com
* Dr. Vivi Stafford Mathur, 6051 San Vicente, Los Angeles (323) 954-9162
* Dr. Dean Weiss, 122 S. Lincoln Blvd #205, Venice (310) 437-3407
* Dr. Wesley Albert, 1605 W. Olympic Blvd #9090, Los Angeles (213) 477-4186
* The Holistic Clinic (Dr. Daniel Cham) 1700 Westwood Blvd. #201, Los Angeles (888) 420-2546 www.my420clinic.com Sat. 12pm-4pm; and 11454 Whittier Blvd, Whittier Tu-Th 4pm-7:30PM.
* Dr. Anna Gravich, 425 S. Fairfax Ave. #302, Los Angeles (323) 954-0231. www.myspace.com/cannabisdoctor
* Aldridge Medical Inc (Dr. Shawn Aldridge), 8932 Woodman Ave. #102, Arleta (818) 920-6800. Open Tu-Th 10-5.
* Dr. Craig S. Cohen, 462 N. Linden Dr. #247, Beverly Hills (323) 939-2248 www.craigcohenMD.com
* Dr. Jaafar Bermani, 249 E. Ocean Blvd #220 Long Beach (562) 983-6870
* Dr. Denney, Dr Sullivan & Dr. Michael Gitter, 22691 Lambert St, Lake Forest, Orange County (949) 855-8845
* Dr. Robert Sterner, San Diego: Phone (619) 543-1061
* Dr Alfonso Jimenez San Diego, Orange Co, Los Angeles, Hawaii 1-888-215-HERB www.1888215HERB.com
* Dr. Joseph Altamirano, Orange County (949) 551-6447
* Dr. Kenneth Johnson, MediMAR Clinic, 2667 Camino Del Rio, South #315, San Diego (619) 297-3800 www.medimarclinic.com
* Cal. Green Consultants (Dr. Joseph Durante), 1760 Cameron Ave #100, West Covina (626) 476-3000.
* Blue Mountain Medical (Dr. Stuart Kramer), 19730 Ventura Blvd #104, Woodland Hills by appointment only - (818) 716-5179
* Norcal Health Care, 2808 F St. #D, Bakersfield (661) 322-4258
* Medicann 866-632-6627 www.medicannusa.com. o Elizabeth Harrington, 1107 Greenacre Ave, West Hollywood 866-632-6627 o Austin Elguindy, 21712 Devonshire St, Chatsworth 866-632-6627 o Austin Elguindy, 4295 Genser St. #1B San Diego 866-632-6627
* Alternative Care Consultants: www.accsocal.com(866) 420-7215 o Dr. Robert Cohen, 6333 Wilshire Blvd #209, Los Angeles (866) 420-7215 o Dr Benjamin Graves 4452 Park Blvd #314 San Diego (866) 420-7215 o Dr. Elaine James 4201 Long Beach Blvd #410 Long Beach(866) 420-7215 o Dr. Michael Solomon 1733 N. Palm Canyon Dr Palm Springs (866) 420-7215

* Cal. Physician Referral Services
    - o California Alliance for Medical MJ Patients (Ventura - LA area) (805) 890-1365
    - o Pacific Support Services - 8921 Sunset Blvd. Greater LA 877-468-5874
    - o Natural Remedies Health Center Clinic- 2141 Broadway #8, Oakland (510) 444-5771.
    - o West Hollywood Medical Marijuana Evaluations 866-468-587

Within the next 120 days the county of orange health department will be issuing medical marijuana ID cards (per SB420)They will verify recommendations and issue a state card.

I will be very happy to give you any information you may require to help you understand



ATTACHMENT NO. 7-22

about medical marijuana and dispensaries.

Thank You
Marla James
714-377-9434

D2 . 69



ATTACHMENT NO. 7.23

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## Ramos, Ricky

**From:** Flynn, Joan
**Sent:** Tuesday, August 14, 2007 6:21 PM
**To:** Ramos, Ricky
**Subject:** Fw: Support for medical marijuana dispensaries

One additional email
Joan L. Flynn, CMC
Huntington Beach City Clerk

----- Original Message -----
From: Craig Marshall/Cubensis <cubensis.craig@verizon.net>
To: Flynn, Joan
Sent: Tue Aug 14 18:13:08 2007
Subject: Support for medical marijuana dispensaries

City Clerk

RE: Medical Marijuana Dispensaries

I am a Huntington Beach resident. I support the existence of medical marijuana facilities in our city. Although I do not use marijuana, I am convinced by solid evidence that its use for medicinal purposes is effective, appropriate, and logical.

Please consider allowing medical marijuana dispensaries to operate in HB. To ban such facilities would be outrageous and against the public conscience.

Sincerely,

Craig Marshall

D2 . 70



ATTACHMENT NO. 7.24

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AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

August 15, 2007

City of Huntington Beach

AUG 20 2007

City of Huntington Beach
Planning Department
Chairperson John Scandura
2000 Main Street
Huntington Beach, CA 92648

Dear Chairperson Scandura,

The last several years have seen a significant increase in the number of dispensaries opening in California. Until recently, most were concentrated in the San Francisco Bay Area. We are now seeing dispensaries opening in larger numbers in Southern California, suburban cities, and even in rural areas. More than 30 cities and counties have now adopted ordinances regulating dispensaries, and we believe that this has ultimately had a positive effect on not only patients, but also the communities in which they live.

Understandably, this trend presents a respectable challenge for California City Councils and County Boards of Supervisors in creating and adopting ordinances that have both the patients and the public in mind. Regardless of the federal government's position on medical marijuana, it is up to the state, and its counties and municipalities to determine what is best for the health of their people. Appropriately, and in accordance with SB 420, state lawmakers have placed the responsibility with cities and counties to take action to regulate the provision of medical cannabis to California's estimated 200,000+ qualified patients.

It is reasonable for civic leaders to have concerns about dispensaries in their community. However, if you look at the track record, the benefits are clear. Unfortunately, there is misleading information being disseminated regarding the supposed negative effects of these facilities.

In striving for the truth, Americans for Safe Access studied the effects of dispensary regulations and issued a report in the fall of 2006. The report, entitled "Medical Cannabis Dispensing Collectives and Local Regulations," is enclosed for your review, and should provide answers to your questions on this issue. The hard evidence in the report comes from public officials speaking openly about the benefits of dispensary regulations. We are sending you this report to illustrate the actual experiences of communities in California that have adopted ordinances regulating medical cannabis dispensing collectives and cooperatives, otherwise known as dispensaries.

**Headquarters**
1322 Webster St, Suite 402, Oakland, CA 94612
**PHONE:** 510.251.1856 **FAX:** 510.251.2036

**National Office**
1730 M Street NW, Washington DC 20036
**PHONE:** 202.857.4272 **FAX:** 202.857.4273

**General Information**
**WEB:** www.AmericansForSafeAccess.org
**TOLL FREE:** 1.888.939.4367

AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

This is an entirely new area of activity, but there are successful precedents to follow. It is important to remember that medical cannabis is legal under state law, and that you are developing regulations for access to a legitimate medicine. The goals of local regulation should be: (1) to ensure that there is a safe, reliable, and sanctioned source of medication for legal patients in your community; and (2) to protect your community from nuisance activity or other harm that may result from the improper operation of these organizations.

We need the participation of the entire community to develop and successfully implement effective regulations for dispensaries. We encourage you to include the voices of patients, providers, and advocates so that they can be heard alongside those of law enforcement and civic leaders. To assist in this process, ASA is committed to helping local governments find ways to implement the will of California voters while protecting the interests of patients and their neighbors. Please utilize our resources at AmericansForSafeAccess.org, and do not hesitate to contact us with any questions or concerns. And, most importantly, please let us know what you think of the enclosed report.

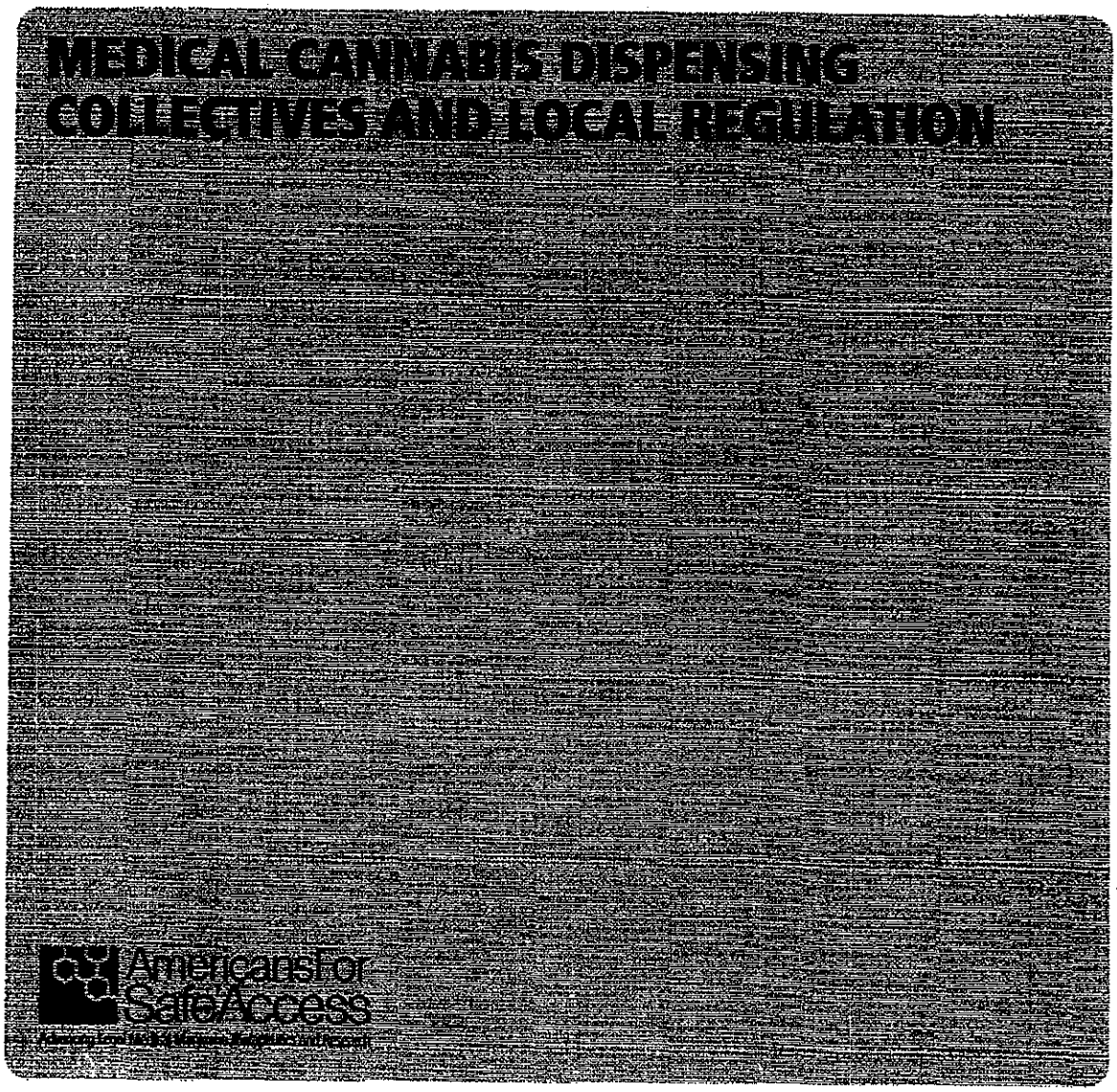
Sincerely,

Rebecca Saltzman
Chief of Staff
(510) 251-1856 x 308
Rebecca@SafeAccessNow.org

# Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS, AND PATIENTS HELPING PATIENTS

# MEDICAL CANNABIS DISPENSING COLLECTIVES AND LOCAL REGULATION

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# MEDICAL CANNABIS DISPENSING COLLECTIVES AND LOCAL REGULATION 2006



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# Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS AND PATIENTS HELPING PATIENTS

## EXECUTIVE SUMMARY

California's original medical cannabis law, the Compassionate Use Act (Prop. 215), directs local officials to implement ways for qualified patients to access their medicine. With the passage of state legislation (SB 420) in 2003, and the 2005 court ruling in *People v. Urziceanu*, medical cannabis dispensing collectives (or dispensaries) are now recognized as legal entities. Since most of the more than 150,000 cannabis patients in California (NORML 2005 estimate) rely on dispensaries for their medicine, communities across the state are facing requests for business licenses or zoning decisions related to the operation of dispensaries.

Americans for Safe Access, the leading national organization representing the interests of medical cannabis patients and their doctors, has undertaken a study of the experience of those communities that have dispensary ordinances. The report that follows details those experiences, as related by local officials; it also covers some of the political background and current legal status of dispensaries, outlines important issues to consider in drafting dispensary regulations, and summarizes a recent study by a University of California, Berkeley researcher on the community benefits of dispensaries. In short, this report describes why:

Regulated dispensaries benefit the community by:

- providing access for the most seriously ill and injured
- offering a safer environment for patients than having to buy on the illicit market
- improving the health of patients through social support
- helping patients with other social services, such as food and housing
- having a greater than average customer satisfaction rating for health care

Creating dispensary regulations combats crime because:

- dispensary security reduces crime in the vicinity
- street sales tend to decrease
- patients and operators are vigilant
- any criminal activity gets reported to police

Regulated dispensaries are:

- legal under California state law
- helping revitalize neighborhoods
- bringing new customers to neighboring businesses
- not a source of community complaints

This report concludes with a section outlining the important elements for local officials to consider as they move forward with regulations for dispensaries. ASA has worked successfully with officials in Kern County, Los Angeles, San Francisco and elsewhere to craft ordinances that meet the state's legal requirements, as well as the needs of patients and the larger community. Please contact ASA if you have questions: 888-929-4367.

# OVERVIEW OF MEDICAL CANNABIS DISPENSARIES

*"As the number of patients in the state of California who rely upon medical cannabis for their treatment continues to grow, it is increasingly imperative that cities and counties address the issue of dispensaries in our respective communities. In the city of Oakland we recognized this need and adopted an ordinance which balances patients' need for safe access to treatment while reassuring the community that these dispensaries are run right. A tangential benefit of the dispensaries has been that they have helped to stimulate economic development in the areas where they are located."*

—Desley Brooks, Oakland City Councilmember

## ABOUT THIS REPORT

Land-use decisions are now part of the implementation of California's medical marijuana, or cannabis, laws. As a result, medical cannabis dispensing collectives (dispensaries) are the subject of considerable debate by planning and other local officials. Dispensaries have been operating openly in many communities since the passage of Proposition 215 in 1996. As a compassionate, community-based response to the problems patients face in trying to access cannabis, dispensaries are currently used by more than half of all patients in the state and are essential to those most seriously ill or injured. Since 2003, when the legislature further implemented state law by expressly addressing the issue of patient collectives and compensation for cannabis, more dispensaries have opened and more communities have been faced with questions about business permits and land use options.

In an attempt to clarify the issues involved, Americans for Safe Access has conducted a survey of local officials in addition to continuously tracking regulatory activity throughout the state. (safeaccessnow.org/regulations.) The report that follows outlines some of the underlying questions and provides an overview of the experiences of cities and counties around the state. In many parts of California, dispensaries have operated responsibly and provided essential services to the most needy without local intervention, but city and county officials are also considering how to arrive at the most effective regulations for their community, ones that respect the rights of patients for safe and legal access within the context of the larger community.

## ABOUT AMERICANS FOR SAFE ACCESS

Americans for Safe Access (ASA) is the largest national member-based organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic uses and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. We have more than 30,000 active members with chapters and affiliates in more than 40 states.

## THE NATIONAL POLITICAL LANDSCAPE

A substantial majority of Americans support safe and legal access to medical cannabis. Public opinion polls in every part of the country show majority support cutting across political and demographic lines. Among them, a Time/CNN poll in 2002 showed 80% national support; a survey of AARP members in 2004 showed 72% of older Americans support legal access, with those in the western states polling 82% in favor.

This broad popular consensus, combined with an intransigent federal government which

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refuses to acknowledge medical uses for cannabis, has meant that Americans have turned to state-based solutions. The laws voters and legislators have passed are intended to mitigate the effects of the federal government's prohibition on medical cannabis by allowing qualified patients to use it without state or local interference. Beginning with California in 1996, voters passed initiatives in eight states plus the District of Columbia — Alaska, Colorado, Maine, Montana, Nevada, Oregon, and Washington. State legislatures followed suit, with elected officials in Hawaii, Maryland, Rhode Island, and Vermont taking action to protect patients from criminal penalty, and the California legislature amending its voter initiative in 2003.

Momentum for these state-level provisions for compassionate use and safe access has continued to build as more research on the therapeutic uses of cannabis is published. And the public advocacy of well-known cannabis patients such as the Emmy-winning talkshow host Montel Williams has also increased public awareness and created political pressure for compassionate state and local solutions.

Twice in the past decade the U.S. Supreme Court has taken up the question. In the most recent case, *Gonzales v. Raich*, a split court upheld the ability of federal officials to prosecute patients if they so choose, but did not overturn state laws. In the wake of that decision, the attorneys general of California, Hawaii, Oregon, and Colorado all issued legal opinions or statements reaffirming their state's medical cannabis laws. The duty of state and local law enforcement is to the enforcement and implementation of state, not federal, law.

## HISTORY OF MEDICAL CANNABIS IN CALIFORNIA

Local officials and voters in California have recognized the needs of medical cannabis patients in their communities and have taken action, even before voters made it legal in 1996. In 1991, 80% of San Francisco voters supported Proposition P, a ballot initiative which recommended a non-enforcement policy for the medical use, cultivation and distribution of marijuana. In 1992, citing both the interests of their constituency and the endorsement of therapeutic use by the California Medical Association, the San Francisco Board of Supervisors adopted a resolution urging the mayor and district attorney to accept letters from recommending physicians (Resolution No. 141-98). In 1993, the Sonoma Board of Supervisors approved a resolution mirroring a Senate Joint Resolution passed earlier that year, noting that a UN committee had called for cannabis to be made available by prescription and calling on "Federal and State representatives to support returning [cannabis] preparations to the list of available medicines which can be prescribed by licensed physicians" (Resolution No. 93-1547).

Since 1996 when 56% of California voters approved the Compassionate Use Act (CUA), public support for safe and legal access to medical cannabis has only increased. A statewide Field poll in 2004 found that "three in four voters (74%) favors implementation of the law. Voter support for the implementation of Prop. 215 cuts across all partisan, ideological and age subgroups of the state." (field.com/fieldpollonline/subscribers/Rls2105.pdf)

Even before the release of that Field poll, state legislators recognized that there is both strong support among voters for implementing the safe and legal access promised by the Compassionate Use Act (CUA) and little direction as to how local officials should proceed. This led to the drafting and passage of Senate Bill 420 in 2003, which amended the CUA to spell out more clearly the obligations of local officials for implementation.

## WHAT IS A CANNABIS DISPENSARY?

The majority of medical marijuana (cannabis) patients cannot cultivate their medicine for themselves or find a caregiver to grow it for them. Most of California's estimated 200,000 patients obtain their medicine from a Medical

Cannabis Dispensing Collective (MCDC), often referred to as a "dispensary." Dispensaries are typically storefront facilities that provide medical cannabis and other services to patients in need. There are more than 200 dispensaries operating in California as of August 2006. Dispensaries operate with a closed membership that allow only patients and caregivers to obtain cannabis and only after membership is approved (upon verification of patient documentation). Many dispensaries offer on-site consumption, providing a safe and comfortable place where patients can medicate. An increasing number of dispensaries offer additional services for their patient membership, including such services as: massage, acupuncture, legal trainings, free meals, or counseling. Research on the social benefits for patients is discussed in the last section of this report.

## RATIONALE FOR CANNABIS DISPENSARIES

While the Compassionate Use Act does not explicitly discuss medical cannabis dispensaries, it calls for the federal and state governments to "implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (Health & Safety Code § 11362.5) This portion of the law has been the basis for the development of compassionate, community-based systems of access for patients in various parts of California. In some cases, that has meant the creation of patient-run growing collectives that allow those with cultivation expertise to help other patients obtain medicine. In most cases, particularly in urban settings, that has meant the establishment of medical cannabis dispensing collectives, or dispensaries. These dispensaries are typically organized and run by groups of patients and their caregivers in a collective model of patient-directed health care that is becoming a model for the delivery of other health services.

## MEDICAL CANNABIS DISPENSARIES ARE LEGAL UNDER STATE LAW

In an effort to clarify the voter initiative of 1996 and aid in its implementation across the state, the California legislature enacted Senate Bill 420 in 2004, which expressly states that qualified patients and primary caregivers may collectively or cooperatively cultivate cannabis for medical purposes (Cal. Health & Safety Code section 11362.775). This provision has been interpreted by the courts to mean that dispensing collectives, where patients may buy their medicine, are legal entities under state law. California's Third District Court of Appeal affirmed the legality of collectives and cooperatives in 2005 in the case of *People v. Urziceanu*, which held that SB 420, which the court called the Medical Marijuana Program Act (MMPA), provides collectives and cooperatives a defense to marijuana distribution charges. Drawing from the Compassionate Use Act's directive to implement a plan for the safe and affordable distribution of medical marijuana, the court found that the MMPA and its legalization of collectives and cooperatives represented the state government's initial response to this mandate. By expressly providing for reimbursement for marijuana and services in connection with collectives and cooperatives, the Legislature has abrogated earlier cases, such as Trippett, Peron, and Young, and established a new defense for those who form and operate collectives and cooperatives to dispense marijuana. (See *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881.)

This new case law parallels the interpretation of SB 420 provided to the League of Cities last year by Berkeley Assistant City Attorney Matthew J. Orebic, in his presentation "Medical Marijuana: The conflict between California and federal law and its effect on local law enforcement and ordinances." As he states in that report:

> In the 2004 legislation, Section 11362.775 ... expressly allow[s] medical marijuana to be cultivated collectively by qualified patients and primary caregivers, and by necessary implication, distributed among the collective's members... Under the collective model, qualified patients who are unwilling or unable to cultivate marijuana

on their own can still have access to marijuana by joining together with other qualified patients to form a collective.

Orebic also notes that the law allows for those involved to "receive reimbursement for services rendered in supplying the patient with medical marijuana."

## WHY PATIENTS NEED CONVENIENT DISPENSARIES

While some patients with long-term illnesses or injuries have the time, space, and skill to cultivate their own cannabis, the majority in the state, particularly those in urban settings, do not have the ability to provide for themselves. For those patients, dispensaries are the only option for safe and legal access. This is all the more true for those individuals who are suffering from a sudden, acute injury or illness.

Many of the most serious and debilitating injuries and illnesses require immediate relief. A cancer patient, for instance, who has just begun chemotherapy will typically need immediate access for help with nausea, which is why a Harvard study found that 45% of oncologists were already recommending cannabis to their patients, even before it had been made legal in any state. It is unreasonable to exclude those patients most in need simply because they are incapable of gardening or cannot wait months for relief.

## WHAT COMMUNITIES ARE DOING TO HELP PATIENTS

Many communities in California have recognized the essential service that dispensaries provide and have either tacitly allowed their creation or, more recently, created ordinances or regulations for their operation. Dispensary regulation is one way in which the city can exert local control over the policy issue and ensure the needs of patients and the community at large are being met. As of August 2006, twenty-six cities and seven counties have enacted regulations, and many more are considering doing so soon. See appendix D.)

Officials recognize their duty to implement state laws, even in instances when they may not have previously supported medical cannabis legislation. Duke Martin, mayor pro tem of Ridgecrest said during a city council hearing on their local dispensary ordinance, "it's something that's the law, and I will uphold the law."

> "Because they are under strict city regulation, there is less likelihood of theft or violence and less opposition from angry neighbors. It is no longer a controversial issue in our city."
>
> —Mike Rotkin, Santa Cruz

This understanding of civic obligation was echoed at the Ridgecrest hearing by Councilmember Ron Carter, who said, "I want to make sure everything is legitimate and above board. It's legal. It's not something we can stop, but we can have an ordinance of regulations."

Similarly, Whittier Planning Commissioner R.D. McDonnell spoke publicly of the benefits of dispensary regulations at a city government hearing. "It provides us with reasonable protections," he said. "But at the same time provides the opportunity for the legitimate operations."

Whittier officials discussed the possibility of an outright ban on dispensary operations, but Greg Nordback said, "It was the opinion of our city attorney that you can't ban them; it's against the law. You have to come up with an area they can be in." Whittier passed its dispensary ordinance in December 2005.

Placerville Police Chief George Nielson commented that, "The issue of medical marijuana continues to be somewhat controversial in our community, as I suspect and hear it remains in other California communities. The issue of 'safe access' is important to some and not to others. There was some objection to the dispensary ordinance, but I would say it was a vocal minority on the issue."

# IMPACT OF DISPENSARIES AND REGULATORY ORDINANCES ON COMMUNITIES IN CALIFORNIA

## DISPENSARIES REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Some reports have suggested that dispensaries are magnets for criminal activity or other behavior that is a problem for the community, but the experience of those cities with dispensary regulations says otherwise. Crime statistics and the accounts of local officials surveyed by ASA indicate that crime is actually reduced by the presence of a dispensary. And complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations.

This trend has led multiple cities and counties to consider regulation as a solution. Kern County, which passed a dispensary ordinance in July 2006, is a case in point. The sheriff there noted in his staff report that "regulatory oversight at the local levels helps prevent crime directly and indirectly related to illegal operations occurring under the pretense and protection of state laws authorizing Medical Marijuana Dispensaries." Although dispensary-related crime has not been a problem for the county, the regulations will help law enforcement determine the legitimacy of dispensaries and their patients.

The sheriff specifically pointed out that, "existing dispensaries have not caused noticeable law enforcement of secondary effects and problems for at least one year. As a result, the focus of the proposed Ordinance is narrowed to insure Dispensary compliance with the law" (Kern County Staff Report, Proposed Ordinance Regulating Medical Cannabis Dispensaries, July 11, 2006).

The presence of a dispensary in the neighborhood can actually improve public safety and reduce crime. Most dispensaries take security for their members and staff more seriously than many businesses. Security cameras are often used both inside and outside the premises, and security guards are often employed to ensure safety. Both cameras and security guards serve as a general deterrent to criminal activity and other problems on the street. Those likely to engage in such activities will tend to move to a less-monitored area, thereby ensuring a safe environment not only for dispensary members and staff but also for neighbors and businesses in the surrounding area.

Residents in areas surrounding dispensaries have reported improvements to the neighborhood. Kirk C., a long time San Francisco resident, commented at a city hearing, "I have lived in the same apartment along the Divisadero corridor in San Francisco for the past five years. Each store that has opened in my neighborhood has been nicer, with many new restaurants quickly becoming some of the city's hottest spots. My neighborhood's crime and vandalism seems to be going down year after year. It strikes me that the dispensaries have been a vital part of the improvement that is going on in my neighborhood."

Oakland's city administrator for the ordinance regulating dispensaries, Barbara Killey, notes that "The areas around the dispensaries may be some of the most safest areas of Oakland now because of the level of security, surveillance, etc...since the ordinance passed."

Likewise, Santa Rosa Mayor Jane Bender noted that since the city passed its ordinance, there appears to be "a decrease in criminal activity. There certainly has been a decrease in complaints. The city attorney says there have been no complaints either from citizens nor from neighboring businesses."

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Those dispensaries that go through the permitting process or otherwise comply with local ordinances tend, by their very nature, to be those most interested in meeting community standards and being good neighbors. Cities enacting ordinances for the operation of dispensaries may even require security measures, but it is a matter of good business practice for dispensary operators since it is in their own best interest. Many local officials surveyed by ASA said dispensaries operating in their communities have presented no problems, or what problems there may have been significantly diminished once an ordinance or other regulation was instituted.

Mike Rotkin, fifth-term councilmember and former four-term mayor in the City of Santa Cruz, says about his city's dispensary, "It provides a legal (under State law) service for people in medical need. Because it is well run and well regulated and located in an area acceptable to the City, it gets cooperation from the local police. Because they are under strict city regulation, there is less likelihood of theft or violence and less opposition from angry neighbors. It is no longer a controversial issue in our city."

Regarding the decrease in complaints about existing dispensaries, several officials said that ordinances significantly improved relations with other businesses and the community at large. An Oakland city council staff member noted that they, "had gotten reports of break ins. That kind of activity has stopped . That danger has been eliminated."

## WHY DIVERSION OF MEDICAL CANNABIS IS TYPICALLY NOT A PROBLEM

One of the concerns of public officials is that dispensaries make possible or even encourage the resale of cannabis on the street. But the experience of those cities which have instituted ordinances is that such problems, which are rare in the first place, quickly disappear. In addition to the ease for law enforcement of monitoring openly operating facilities, dispensaries universally have strict rules about how members are to behave in and around the dispensary. Many have "good neighbor" trainings for their members that emphasize sensitivity to the concerns of neighbors, and all absolutely prohibit the resale of cannabis to anyone. Anyone violating that prohibition is typically banned from any further contact with the dispensary.

> "The areas around the dispensaries may be some of the most safest areas of Oakland now because of the level of security , surveillance, etc. since the ordinance passed."
> —Barbara Killey, Oakland

As Oakland's city administrator for the regulatory ordinance explains, "dispensaries themselves have been very good at self policing against resale because they understand they can lose their permit if their patients resell."

In the event of street or other resale, local law enforcement has at its disposal all the many legal penalties the state provides. This all adds up to a safer street environment with fewer drug-related problems than before dispensary operations were permitted in the area. The experience of the City of Oakland is a good example of this phenomenon. The city's legislative analyst, Lupe Schoenberger, stated that, "...[P]eople feel safer when they're walking down the street. The level of marijuana street sales has significantly reduced."

Dispensaries operating with the permission of the city are also more likely to appropriately utilize law enforcement resources themselves, reporting any crimes directly to the appropriate agencies. And, again, dispensary operators and their patient members tend to be more safety conscious than the general public, resulting in great vigilance and better preemptive measures. The reduction in crime in areas with dispensaries has been reported anecdotally by law enforcement in several communities.

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## DISPENSARIES CAN BE GOOD NEIGHBORS

Medical cannabis dispensing collectives are typically positive additions to the neighborhoods in which they locate, bringing additional customers to neighboring businesses and reducing crime in the immediate area.

Like any new business that serves a different customer base than the existing businesses in the area, dispensaries increase the revenue of other businesses in the surrounding area simply because new people are coming to access services, increasing foot traffic past other establishments. In many communities, the opening of a dispensary has helped revitalize an area. While patients tend to opt for dispensaries that are close and convenient, particularly since travel can be difficult, many patients will travel to dispensary locations in parts of town they would not otherwise visit. Even if patients are not immediately utilizing the services or purchasing the goods offered by neighboring businesses, they are more likely to eventually patronize those businesses because of convenience.

ASA's survey of officials whose cities have passed dispensary regulations found that the vast majority of businesses adjoining or near dispensaries had reported no problems associated with a dispensary opening after the implementation of regulation.

Kriss Worthington, longtime councilmember in Berkeley, said in support of a dispensary there, "They have been a responsible neighbor and vital organization to our diverse community. Since their opening, they have done an outstanding job keeping the building clean, neat, organized and safe. In fact, we have had no calls from neighbors complaining about them, which is a sign of respect from the community. In Berkeley, even average restaurants and stores have complaints from neighbors."

Mike Rotkin, fifth term councilmember and former four term mayor in the City of Santa Cruz said about the dispensary that opened there last year, "The immediately neighboring businesses have been uniformly supportive or neutral. There have been no complaints either about establishing it or running it."

Mark Keilty, Planning and Building director of Tulare, when asked if the existence of dispensaries affected local business, said they had "no effect or at least no one has complained."

And Dave Turner, mayor of Fort Bragg, noted that before the passage of regulations there were "plenty of complaints from both neighboring businesses and concerned citizens," but since then, it is no longer a problem. Public officials understand that, when it comes to dispensaries, they must balance both the humanitarian needs of patients and the concerns of the public, especially those of neighboring residents and business owners.

> "Dispensaries themselves have been very good at self policing against resale because they understand they can lose their permit if their patients resell." —Barbara Killey, Oakland

Oakland City Councilmember Nancy J. Nadel wrote in an open letter to her fellow colleagues across the state, "Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parities in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise."

Mike Rotkin of Santa Cruz stated that since Santa Cruz enacted an ordinance for dispensary operations, "Things have calmed down. The police are happy with the ordinance, and that has made things a lot easier. I think the fact that we took the time to give people who wrote us respectful and detailed explanations of what we were doing and why made a real difference."

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# BENEFITS OF DISPENSARIES TO THE PATIENT COMMUNITY

## DISPENSARIES PROVIDE MANY BENEFITS TO THE SICK AND SUFFERING

Safe and legal access to cannabis is the reason dispensaries have been created by patients and caregivers around the state. For many people, dispensaries remove significant barriers to their ability to obtain cannabis. Patients in urban areas with no space to cultivate cannabis, those without the requisite gardening skills to grow their own, and, most critically, those who face the sudden onset of a serious illness or who have suffered a catastrophic illness — all tend to rely on dispensaries as a compassionate, community-based solution that is an alternative to potentially dangerous illicit market transactions.

Many elected officials around the state recognize the importance of dispensaries for their constituents. As Nathan Miley, former Oakland City councilmember and now Alameda County supervisor said in a letter to his colleagues, "When designing regulations, it is crucial to remember that at its core this is a healthcare issue, requiring the involvement and leadership of local departments of public health. A pro-active healthcare-based approach can effectively address problems before they arise, and communities can design methods for safe, legal access to medical marijuana while keeping the patients' needs foremost."

Likewise, Abbe Land, mayor of West Hollywood says safe access is "very important" and long-time councilmember John Duran agreed, adding, "We have a very high number of HIV-positive residents in our area. Some of them require medical marijuana to offset the medications they take for HIV." Jane Bender, mayor of Santa Rosa, says, "There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine."

Oakland's city administrator for ordinances, said safe access to cannabis is "very important" for the community. "In the finding the council made to justify the ordinance, they say 'have safe and affordable access'."

And Mike Rotkin, the longtime Santa Cruz elected official, said that this is also an important matter for his city's citizens: "The council considers it a high priority and has taken considerable heat to speak out and act on the issue."

It was a similar decision of social conscience that lead to Placerville's city council putting a regulatory ordinance in place. Councilmember Marian Washburn told her colleagues that "as you get older, you know people with diseases who suffer terribly, so that is probably what I get down to after considering all the other components."

While dispensaries provide a unique way for patients to obtain the cannabis their doctors have recommended, they typically offer far more that is of benefit to the health and welfare of those suffering both chronic and acute medical problems.

Dispensaries are often called "clubs" in part because many of them offer far more than a clinical setting for obtaining cannabis. Recognizing the isolation that many seriously ill and injured people experience, many dispensary operators chose to offer a wider array of social services, including everything from a place to congregate and socialize to help with finding housing and meals. The social support patients receive in these settings has far-reaching benefits that is also influencing the development of other patient-based care models.

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## RESEARCH SUPPORTS THE DISPENSARY MODEL

A 2006 study by Amanda Reiman, Ph.D. of the School of Social Welfare at the University of California, Berkeley examined the experience of 130 patients spread among seven different dispensaries in the San Francisco Bay Area. Dr. Reiman's study cataloged the patients' demographic information, health status, consumer satisfaction, and use of services, while also considering the dispensaries' environment, staff, and services offered. The study found that "medical cannabis patients have created a system of dispensing medical cannabis that also includes services such as counseling, entertainment and support groups, all important components of coping with chronic illness." She also found that levels of satisfaction with the care received at dispensaries ranked significantly higher than those reported for health care nationally.

Patients who use the dispensaries studied uniformly reported being well satisfied with the services they received, giving an 80% satisfaction rating. The most important factors for patients in choosing a medical cannabis dispensary were: feeling comfortable and secure, familiarity with the dispensary, and having a rapport with the staff. In their comments, patients tended to note the helpfulness and kindness of staff and the support found in the presence of other patients.

Patients in Dr. Reiman's study frequently cited their relationships with staff as a positive factor. Comments from six different dispensaries include:

"I love this spot because of the love they give, always! They treat everyone like a family loved one!"

"This particular establishment is very friendly for the most part and very convenient for me."

"The staff and patients are like family to me!"

"The staff are warm and respectful."

"The staff at this facility are always cordial and very friendly. I enjoy coming."

"This is the friendliest dispensary that I have ever been to and the staff is always warm and open. That's why I keep coming to this place. The selection is always wide."

## MANY DISPENSARIES PROVIDE KEY SOCIAL SERVICES

Dispensaries offer many cannabis-related services that patients cannot otherwise obtain. Among them is an array of cannabis varieties, some of which are more useful for certain afflictions than others, and staff awareness of what types of cannabis other patients report to be helpful. In other words, one variety of cannabis may be effective for pain control while another may be better for combating nausea. Dispensaries allow for the pooling of information about these differences and the opportunity to access the type of cannabis likely to be most beneficial.

> "There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine."
> —Jane Bender, Santa Rosa

Other cannabis-related services include the availability of cannabis products in other forms than the smokeable ones. While most patients prefer to have the ability to modulate dosing that smoking easily allows, for others, the effects of edible cannabis products are preferable. Dispensaries typically offer edible products such as brownies or cookies for those purposes. Many dispensaries also offer classes on how to grow your own cannabis, classes on legal matters, trainings for healthcare advocacy, and other seminars.

Beyond providing safe and legal access to cannabis, the dispensaries studied also offer important social services to patients, including counseling, help with housing and meals, hospice and other care referrals, and, in one case,

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even doggie daycare for members who have doctor appointments or work commitments. Among the broader services the study found in dispensaries are support groups, including groups for women, veterans, and men; creativity and art groups, including groups for writers, quilters, crochet, and crafts; and entertainment options, including bingo, open mike nights, poetry readings, internet access, libraries, and puzzles. Clothing drives and neighborhood parties are among the activities that patients can also participate in through their dispensary.

Social services such as counseling and support groups were reported to be the most commonly and regularly used service, with two-thirds of patients reporting that they use social services at dispensaries 1-2 times per week. Also, life services, such as free food and housing help, were used at least once or twice a week by 22% of those surveyed.

"Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parities in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise." —Nancy Nadel, Oakland

Dispensaries offer chronically ill patients even more than safe and legal access to cannabis and an array of social services. The study found that dispensaries also provided other social benefits for the chronically ill, an important part of the bigger picture:

> [T]he multiple services provided by the social model are only part of the culture of social club facility. Another component of this model ... is the possible benefit that social support has for one diagnosed with a chronic and/or terminal physical or psychological illness. Beyond the support that medical cannabis patients receive from services is the support received from fellow patients, some of whom are experiencing the same or similar physical/psychological symptoms.... It is possible that the mental health benefits from the social support of fellow patients is an important part of the healing process, separate from the medicinal value of the cannabis itself.

Several researchers and physicians who have studied the issue of the patient experience with dispensaries have concluded that there are other important positive effects stemming from a dispensary model that includes a component of social support groups.

Dr. Reiman notes that, "support groups may have the ability to address issues besides the illness itself that might contribute to long-term physical and emotional health outcomes, such as the prevalence of depression among the chronically ill."

For those who suffer the most serious illness, such as HIV/AIDS and terminal cancer, these groups of like-minded people with similar conditions can also help patients through the grieving process. Other research into the patient experience has found that many patients have lost or are losing friends and partners to terminal illness. These patients report finding solace with other patients who are also grieving or facing end-of-life decisions. A medical study published in 1998 concluded that the patient-to-patient contact associated with the social club model was the best therapeutic setting for ill people.

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# CONCLUSION

Dispensaries are proving to be an asset to the communities they serve, as well as the larger community within which they operate.

ASA's survey of local officials and monitoring of regulatory activity throughout the State of California has shown that, once working regulatory ordinances are in place, dispensaries are typically viewed favorably by public officials, neighbors, businesses, and the community at large, and that regulatory ordinances can and do improve an area, both socially and economically.

Dispensaries - now expressly legal under California state law - are helping revitalize neighborhoods by reducing crime and bringing new customers to surrounding businesses. They improve public safety by increasing the security presence in neighborhoods, reducing illicit market marijuana sales, and ensuring that any criminal activity gets reported to the appropriate law enforcement authorities.

More importantly, dispensaries benefit the community by providing safe access for those who have the greatest difficulty getting the medicine their doctors recommend: the most seriously ill and injured. Many dispensaries also offer essential services to patients, such as help with food and housing.

Medical and public health studies have also shown that the social-club model of most dispensaries is of significant benefit to the overall health of patients. The result is that cannabis patients rate their satisfaction with dispensaries as far greater than the customer-satisfaction ratings given to health care agencies in general.

Public officials across the state, in both urban and rural communities where dispensary regulatory ordinances have been adopted, have been outspoken in praise of what. Their comments are consistent on and favorable to the regulatory schemes they enacted and the benefits to the patients and others living in their communities.

As a compassionate, community-based response to the medical needs of more than 150,000 sick and suffering Californians, dispensaries are working.





ATTACHMENT NO. 7-29

# APPENDIX A

## RECOMMENDATIONS ON DISPENSARY REGULATIONS

Cannabis dispensaries have been operating successfully around California for a decade with very few problems. But since the legislature and courts have acted to make their legality a matter of state law more than local tolerance, the question of how to implement appropriate zoning and business licensing is coming before local officials all across the state. What follows are recommendations on matters to consider, based on adopted code as well as ASA's extensive experience working with community leaders and elected officials.

## COMMUNITY OVERSIGHT

In order to appropriately resolve conflict in the community and establish a process by which complaints and concerns can be reviewed, it can often be helpful to create a community oversight committee. Such committees, if fair and balanced, can provide a means for the voices of all affected parties to be heard, and to quickly resolve problems.

The Ukiah City Council created such a task force in 2005; what follows is how they defined the group:

The Ukiah Medical Marijuana Review and Oversight Commission shall consist of seven members nominated and appointed pursuant to this section. The Mayor shall nominate three members to the commission, and the City Council shall appoint, by motion, four other members to the commission. Each nomination of the Mayor shall be subject to approval by the City Council, and shall be the subject of a public hearing and vote within 40 days. If the City Council fails to act on a mayoral nomination within 40 days of the date the nomination is transmitted to the Clerk of the City Council, the nominee shall be deemed approved. Appointments to the commission shall become effective on the date the City Council adopts a motion approving the nomination or on the 41st day following the date the mayoral nomination was transmitted to the Clerk of the City Council if the City Council fails to act upon the nomination prior to such date.

Of the three members nominated by the Mayor, the Mayor shall nominate one member to represent the interests of City neighborhood associations or groups, one member to represent the interests of medical marijuana patients, and one member to represent the interests of the law enforcement community.

Of the four members of the commission appointed by the City Council, two members shall represent the interests of City neighborhood associations or groups, one member shall represent the interests of the medical marijuana community, and one member shall represent the interests of the public health community.

## DISPENSARIES REGULATIONS ARE BEST HANDLED THROUGH THE HEALTH OR PLANNING DEPARTMENTS, NOT LAW ENFORCEMENT AGENCIES

**Reason:** To ensure that qualified patients, caregivers, and dispensaries are protected, general regulatory oversight duties — including permitting, record maintenance and related protocols — should be the responsibility of the local department of public health (DPH) or planning department. Given the statutory mission and responsibilities of DPH, it is the natural choice and best-suited agency to address the regulation of medical cannabis dispensing collectives. Law enforcement agencies are ill-suited for handling such matters, having little or no expertise in health and medical affairs.

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**Examples of responsible agencies and officials:**

- Angels Camp — City Administrator
- Atascadero — Planning Commission
- Citrus Heights — City Manager
- Los Angeles — Planning Department
- Plymouth — City Administrator
- San Francisco — Department of Public Health
- Selma — City Manager
- Visalia — City Planner

## ARBITRARY CAPS ON THE NUMBER OF DISPENSARIES CAN BE COUNTER-PRODUCTIVE

**Reason:** Policymakers do not need to set arbitrary limitations on the number of dispensing collectives allowed to operate because, as with other services, competitive market forces and consumer choice will be decisive. Dispensaries which provide quality care and patient services to their memberships will flourish, while those that do not will fail.

Capping the number of dispensaries limits consumer choice, which can result in both decreased quality of care and less affordable medicine. Limiting the number of dispensing collectives allowed to operate may also force patients with limited mobility to travel farther for access than they would otherwise need to.

Artificially limiting the supply for patients can result in an inability to meet demand, which in turn may lead to such undesirable effects as lines outside of dispensaries, increased prices, and lower quality medicine.

**Examples of cities and counties without numerical caps on dispensaries:**

- Dixon
- Elk Grove
- Fort Bragg
- Placerville
- Ripon
- Selma
- Tulare
- Calaveras County
- Kern County
- Los Angeles County
- City and County of San Francisco

## RESTRICTIONS ON WHERE DISPENSARIES CAN LOCATE ARE OFTEN UNNECESSARY AND CAN CREATE BARRIERS TO ACCESS

**Reason:** As described in this report, regulated dispensaries do not generally increase crime or bring other harm to their neighborhoods, regardless of where they are located. And since for many patients travel is difficult, cities and counties should take care to avoid unnecessary restrictions on where dispensaries can locate. Patients benefit from dispensaries being convenient and accessible, especially if the patients are disabled or have conditions that limit their mobility.

It is unnecessary and burdensome for patients and dispensaries, to restrict dispensaries to industrial corners, far away from public transit and other services. Depending on a city's population density, it can also be extremely detrimental to set excessive proximity restrictions (to schools or other facilities) that can make it impossible for dispensaries to locate anywhere within the city limits. It is important to balance patient needs with neighborhood concerns in this process.

## PATIENTS BENEFIT FROM ON-SITE CONSUMPTION AND PROPER VENTILATION SYSTEMS

**Reason:** Dispensaries that allow members to consume medicine on-site have positive psychosocial health benefits for chronically ill people who are otherwise isolated. On-site consumption encourages dispensary members to take advantage of the support services that improve patients' quality of life and, in some cases, even prolong it. Researchers have shown that support groups like those offered by dispensaries are effective for patients with a variety of serious illnesses. Participants active in support services are less anxious and depressed, make better use of their time and are more likely to return to work than patients who receive only standardized care, regardless of whether they have serious psychiatric symptoms. On-site consumption is also important for patients who face restrictions to off-site consumption, such as those in subsidized or other housing arrangements that prohibit smoking. In addition, on-site consumption provides an oppor-



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tunity for patients to share information about effective use of cannabis and to use specialized delivery methods, such as vaporizers, which do not require smoking.

**Examples of localities that permit on-site consumption** (many stipulate ventilation requirements):

- Berkeley
- San Francisco
- Alameda County
- Kern County
- Los Angeles County

DIFFERENTIATING DISPENSARIES FROM PRIVATE PATIENT COLLECTIVES IS IMPORTANT

**Reason:** Private patient collectives, in which several patients grow their medicine collectively at a private location, should not be required to follow the same restrictions that are placed on retail dispensaries, since they are a different type of operation. A too-broadly written ordinance may inadvertently put untenable restrictions on individual patients and caregivers who are providing either for themselves or a few others.

**Example:** Santa Rosa's adopted ordinance, provision 10-40.030 (F):

"Medical cannabis dispensing collective," hereinafter "dispensary," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple "qualified patients" and/or "primary care givers," are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, "retail" distribution of medical cannabis. "Dispensary" means any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq., or a qualified patient's or caregiver's place of residence.

PATIENTS BENEFIT FROM ACCESS TO EDIBLES AND MEDICAL CANNABIS CONSUMPTION DEVICES

**Reason:** Not all patients smoke cannabis. Many find tinctures (cannabis extracts) or edibles (such as baked goods containing cannabis) to be more effective for their conditions. Allowing dispensaries to carry these items is important to patients getting the best level of care possible. For patients who have existing respiration problems or who otherwise have an aversion to smoking, edibles are essential. Conversely, for patients who do choose to smoke or vaporize, they need to procure the tools to do so. Prohibiting dispensaries from carrying medical cannabis consumption devices, often referred to as paraphernalia, forces patients to go elsewhere to procure these items. Additionally, when dispensaries do carry these devices, informed dispensary staff can explain their usage to new patients.

**Examples of localities allowing dispensaries to carry edibles and delivery devices:**

- Angels Camp
- Berkeley
- Citrus Heights
- Santa Cruz
- Sutter Creek
- West Hollywood
- Alameda County
- Kern County
- Los Angeles County

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# APPENDIX B

## MEDICAL CANNABIS DISPENSARY ORDINANCE EVALUATION SURVEY QUESTIONS

1. What is your name and position?

2. How important is safe access to medical marijuana in your community?

3. On what date did your city/county pass its ordinance?

4. Were there medical cannabis dispensaries in your district before the ordinance? How many?

5. If any, were there any complaints against them before the ordinance was passed? If yes, who made the complaints? What were the specific complaints that were made? How frequently were complaints made?

6. Were there any objections to passing an ordinance to regulate medical cannabis dispensaries?

7. If so, what were the primary objections? Who were the main objectors?

8. Has the ordinance implementation allayed or amplified those concerns?

9. How many medical cannabis dispensaries are there now? What is the estimated population of the area that may utilize them? Do you think the current number of dispensaries is enough to address the needs of the community?

10. Has there been an increase or decrease in criminal activity related to dispensaries since the regulations were implemented?

11. How has the ordinance improved the public safety in your community? Has it worsened the public safety? How?

12. Has the existence of dispensaries affected local business? How do neighboring businesses view dispensaries?

13. What would you advocate be changed in the current regulations?

14. Do you have anything else you would like to say in evaluation of the medical cannabis ordinance?



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# APPENDIX C

## SURVEY ANSWER AND DATA ANALYSIS

### Summary

- The majority of responses were positive.
- Safe access is important to every community.
- Complaints of dispensaries generally decrease after regulation.
- Objections to the ordinance were allayed after implementation.
- Regulation improved public safety.
- Crime decreases or shows no effect affect after regulations
- Most businesses are either supportive of or neutral about neighboring dispensaries.

| | Safe access important to local community | Dispensaries existed prior to regulation | Complaints of existing dispensaries prior to ordinance | Complaints decreased after passage of ordinance | Community objections to the ordinance | Regulation implementation allayed ordinance objections | Regulation improved public safety | Regulation resulted in decrease of crime around dispensaries | Positive effects on business post-regulation | Responses |
|---|---|---|---|---|---|---|---|---|---|---|
| **Fort Bragg** | | | | | | | | | | |
| | | √ | √ | √ | | | | | | Yes |
| | √ | | | | | | | | | No |
| | | | | | √ | √ | √ | √ | √ | Neutral |
| **Oakland** | | | | | | | | | | |
| | √ | √ | √ | √ | √ | √ | √ | √ | √ | Yes |
| | | | | | | | | | | No |
| | | | | | | | | | | Neutral |
| **Placerville** | | | | | | | | | | |
| | | √ | | | √ | | | | | Yes |
| | | | | | | | | | | No |
| | √ | | √ | √ | | √ | √ | √ | √ | Neutral |
| **San Francisco** | | | | | | | | | | |
| | √ | √ | √ | | √ | | | | √ | Yes |
| | | | | | | | | | | No |
| | | | | √ | | √ | √ | √ | | Neutral |
| **Santa Cruz** | | | | | | | | | | |
| | √ | √ | √ | √ | √ | √ | √ | √ | √ | Yes |
| | | | | | | | | | | No |
| | | | | | | | | | | Neutral |
| **Santa Rosa** | | | | | | | | | | |
| | √ | √ | √ | √ | √ | √ | √ | √ | | Yes |
| | | | | | | | | | | No |
| | | | | | | | | | √ | Neutral |
| **Tulare** | | | | | | | | | | |
| | √ | √ | | | √ | | | | | Yes |
| | | | √ | | | √ | | | | No |
| | | | | √ | | | √ | √ | √ | Neutral |
| **West Hollywood** | | | | | | | | | | |
| | √ | √ | | | | | √ | | | Yes |
| | | | √ | | √ | | | | | No |
| | | | | √ | | √ | | √ | √ | Neutral |

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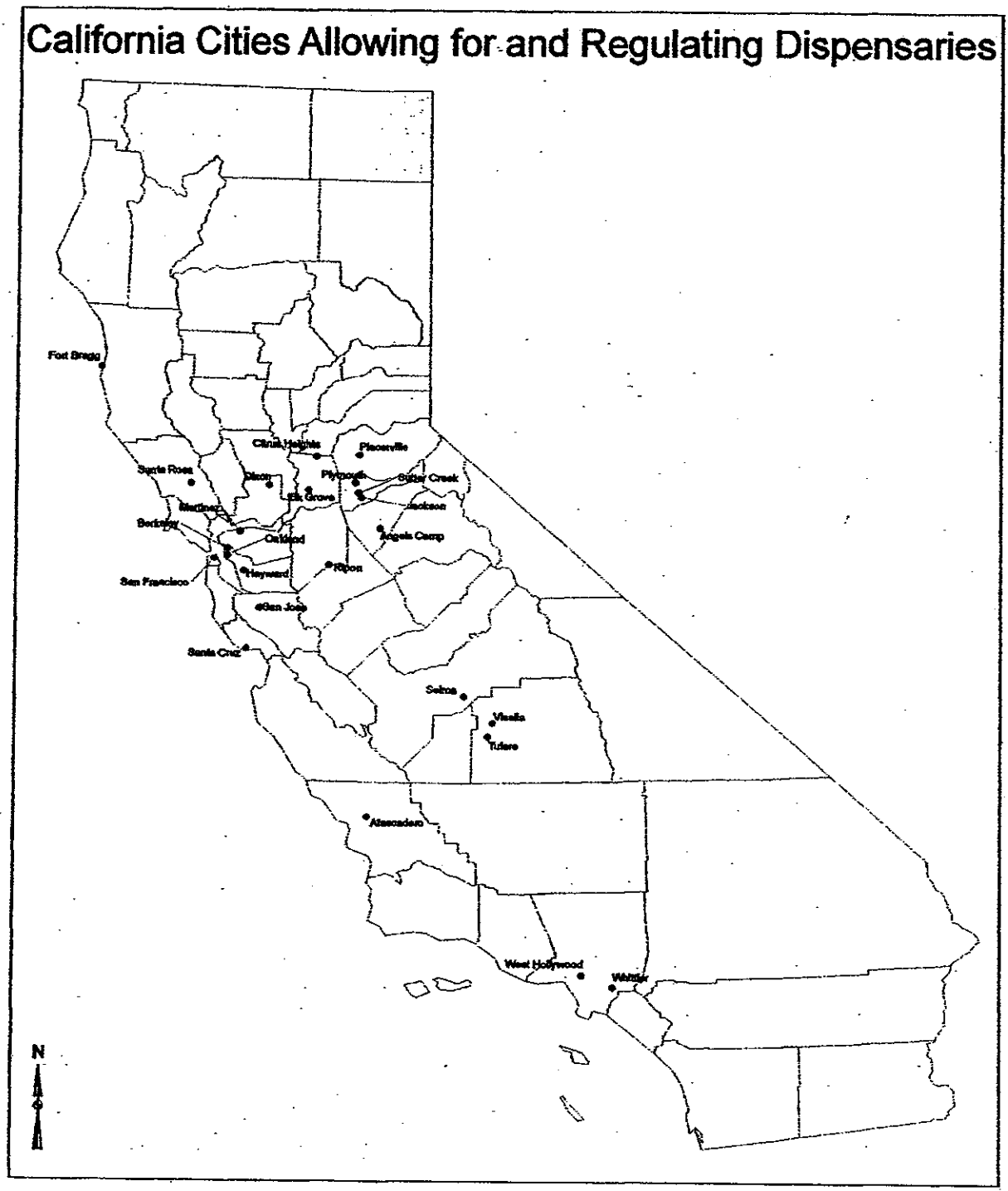
ATTACHMENT NO. 7.44

# California Cities Allowing for and Regulating Dispensaries



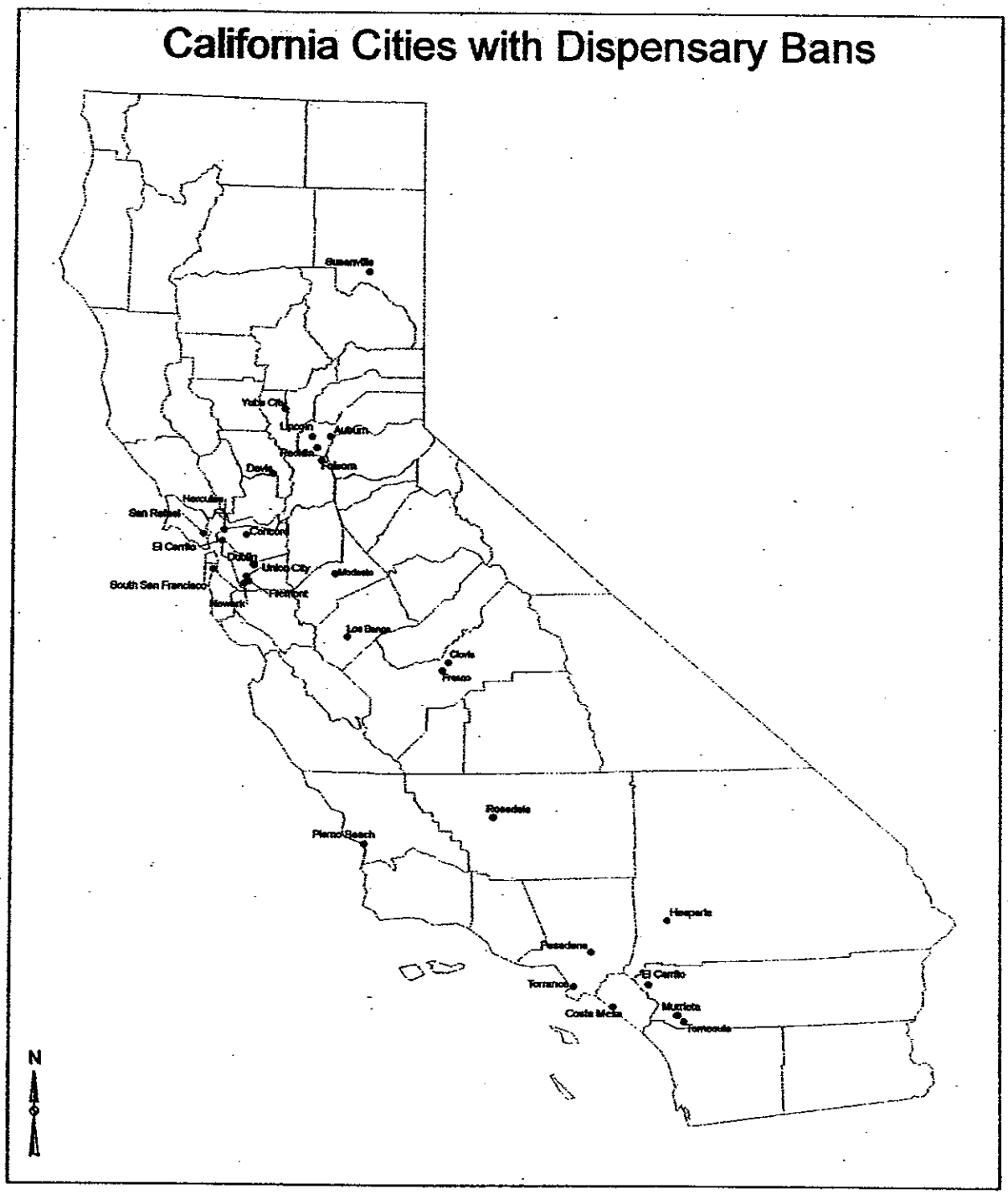

As of October 2006

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.



ATTACHMENT NO. 7.45

# California Cities with Dispensary Bans




As of October 2006

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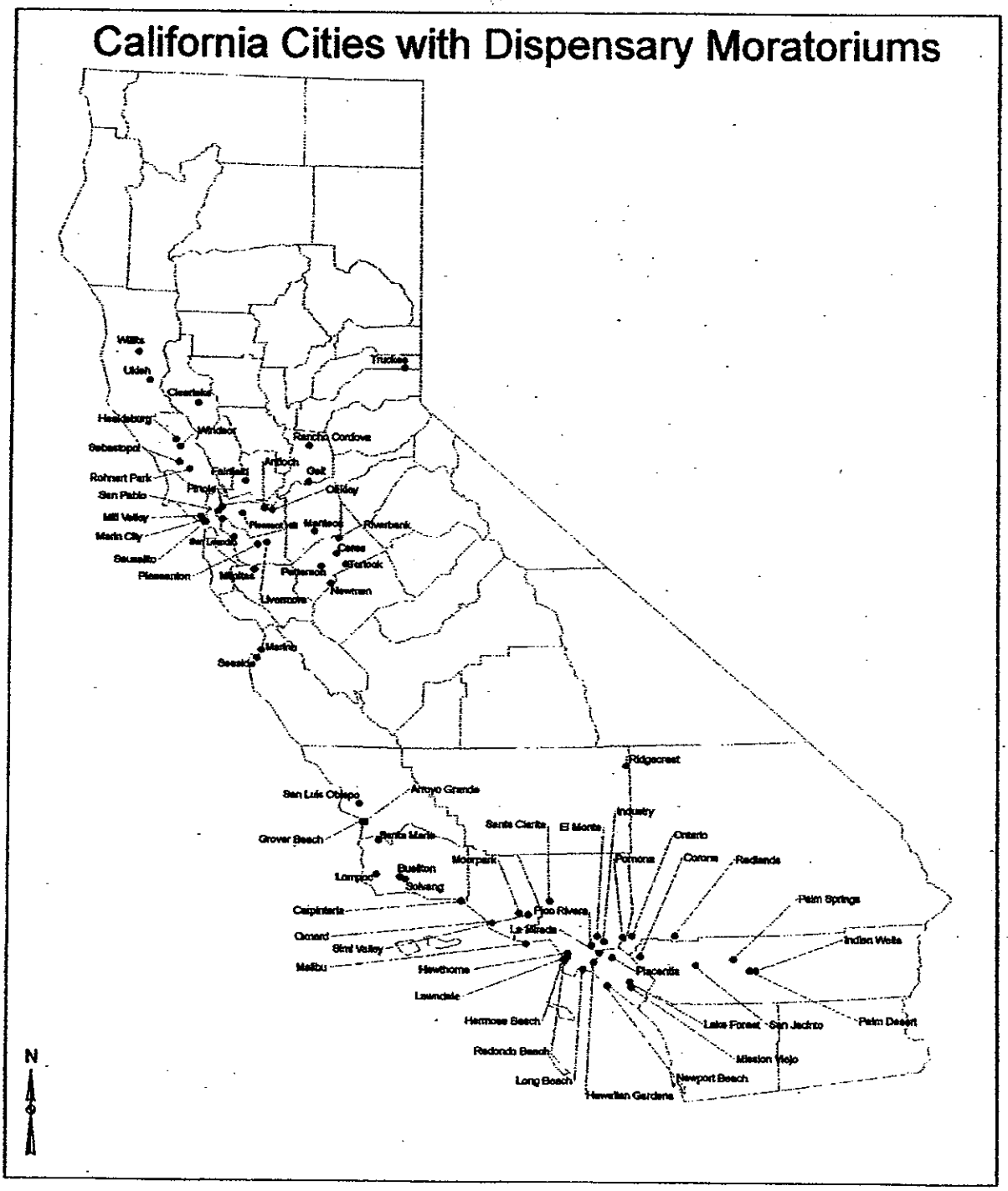
ATTACHMENT NO. 7.4C

# California Cities with Dispensary Moratoriums




As of October 2006

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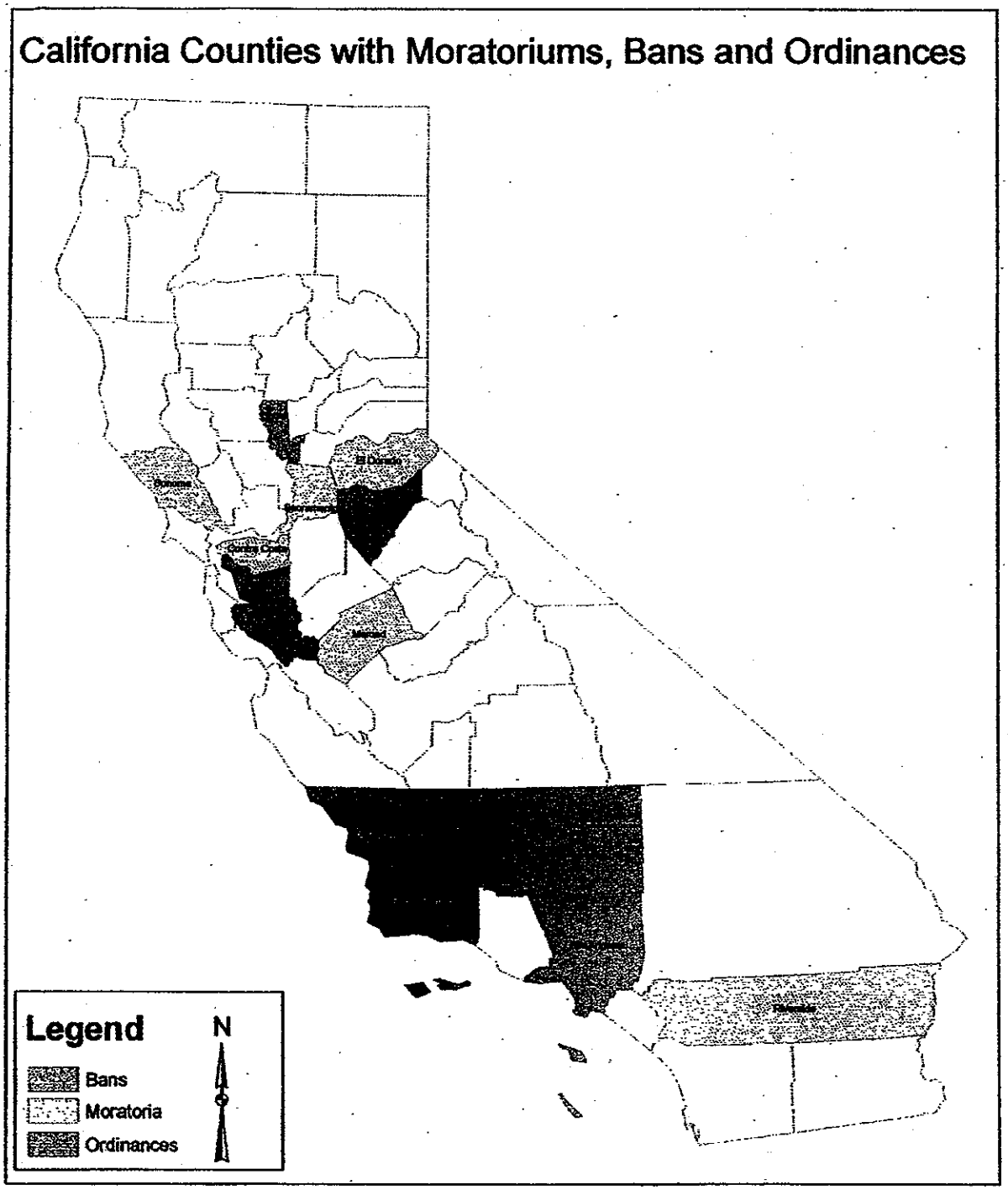
ATTACHMENT NO. 1.47

# California Counties with Moratoriums, Bans and Ordinances




As of October 2006

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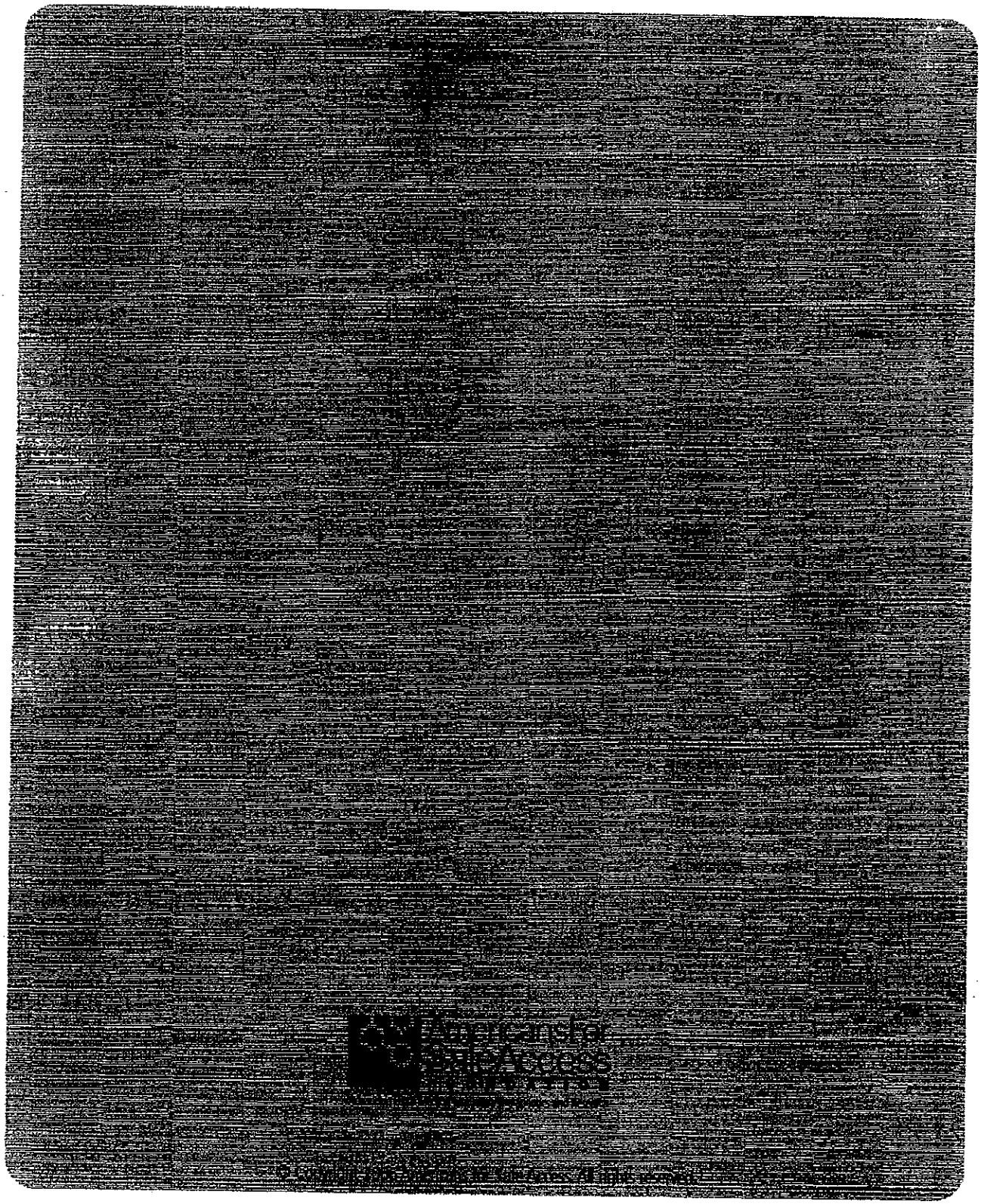


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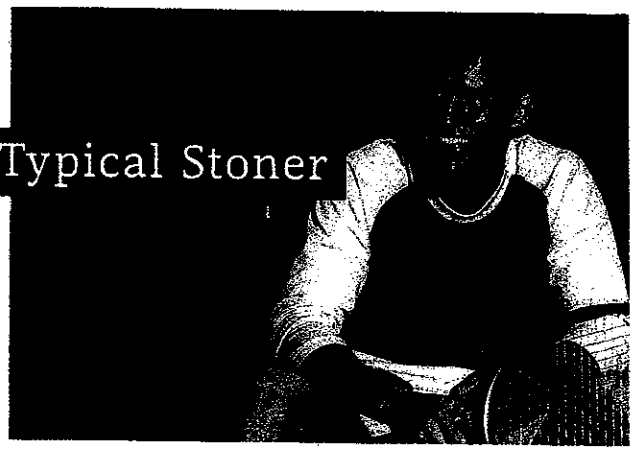
ATTACHMENT NO. 7.49

**Association of Patient Advocates**

**William Britt, Exec.Dir.**

Phone: (562) 420-1081
Cell: (562) 818-0420
E-Mail: wbrittapa@aol.com




Josh, 28, is a full time law student and community volunteer.

## He was diagnosed last year with HIV.

He's a regular user of medical marijuana. After suffering from toxic side effects of his drug regimen, he found medical marijuana helps increase his appetite, reduces nausea and lets him sleep at night. Josh has a difficult road ahead, but medical marijuana makes his days easier, and allows him to enjoy his life.

Josh never thought he was the type of person who would use marijuana as medicine, until he did - and realized that

## Marijuana Works.

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**ATTACHMENT NO. 7.50**

ATTACHMENT NO. 7-51

Americans for Safe Access
For Immediate Release: September 7, 2007

State Civil Court Affirms Right to Cultivate Medical Marijuana Collectively
Superior Court Judge Ruled Thursday against Butte County's Ban on Patient Collectives

Chico, CA – Butte County Superior Court issued a strongly worded ruling Thursday, affirming the right of medical marijuana patients to cultivate collectively. In no uncertain terms, Superior Court Judge Barbara Roberts ruled that seriously ill patients cultivating collectively "should not be required to risk criminal penalties and the stress and expense of a criminal trial in order to assert their rights." Judge Roberts' ruling also rejected Butte County's policy of requiring all members to physically participate in the cultivation, thereby allowing collective members to "contribute financially."

In May 2006, Americans for Safe Access (ASA), the nation's largest medical marijuana advocacy organization, filed a group lawsuit on behalf of a 7-person private patient collective, seeking declaratory and injunctive relief, as well as damages and attorneys fees. After a September 2005 warrantless search of his home in Paradise, California, by the Butte County Sheriff's Department, cultivator David Williams was forced to uproot and destroy more than two dozen plants or face arrest and prosecution. "We were told that it was not lawful to grow collectively for multiple patients," said 54-year old patient and collective member David Williams of the 2005 incident.

Thursday's Superior Court decision overruled a demurrer, filed by the County of Butte in an effort to dismiss the case. Judge Roberts found that "the destruction of plaintiffs' property was improper" if, in fact, the collective was valid under state law. "The next step," according to ASA Chief Counsel Joe Elford, "is to show that Williams was running a valid collective. At that point, the court is expected to make a final determination consistent with yesterday's ruling, which strongly vindicates the right of medical marijuana patients to associate together to grow the medicine they need."

ASA was compelled to file the Williams lawsuit after receiving repeated reports of unlawful behavior by Butte County law enforcement, as well as by other police agencies throughout the state. After uncovering Butte County's de facto ban on medical marijuana patient collectives, ASA decided to pursue the case to show that collectives and cooperatives are protected under state law. "The ruling not only affirms ASA's position that civil court is an 'appropriate forum to address the issues of medical patients' rights,'" said Elford. "It also sends a clear message to local law enforcement in California that they must respect the rights of patients to cultivate collectively."

For more information:
HYPERLINK "http://www.safeaccessnow.org/downloads/Butte_County_Ruling.pdf"Butte County Superior Court ruling from September 6, 2007
HYPERLINK "http://www.safeaccessnow.org/downloads/Butte_Complaint4.pdf"ASA's lawsuit challenging Butte County's ban on collective cultivation



ATTACHMENT NO. 7.52

For Immediate Release: May 9th, 2006

LA County Victory on Medical Marijuana

**For Immediate Release: May 9, 2006**

**LA County Reaffirms Medical Marijuana Dispensary Ordinance & Votes to Implement State ID Card Program**

Los Angeles, CA – Today, the Los Angeles County Board of Supervisors approved two pieces of medical marijuana legislation that will help improve safe access for patients throughout the County. The Board voted in favor of an ordinance to regulate medical cannabis dispensing collectives (dispensaries) in unincorporated LA County and voted to move forward with the state Medical Marijuana ID Card Program. Los Angeles County joins with 3 other counties and 24 cities in California to establish guidelines and regulations governing dispensaries; and is the 22nd County to implement the State's Medical Marijuana ID Card Program. Dozens of patients and advocates in attendance applauded the Board for taking action.

Patient-advocates with Americans for Safe Access (ASA), the nation's largest medical marijuana advocacy group, were pleased with the day's proceedings. "This is a victory for patients and a solid step towards countywide implementation of Proposition 215 and SB-420, California's medical cannabis laws," said Amanda Brazel, Los Angeles County Field Coordinator for ASA. "LA County is leading the way now. This puts the nation's most populous county ahead of the curve on medical cannabis."

The popular ordinance requires safety protocols and allows for on-site consumption of medication. The ordinance also allows dispensaries to provide patients with cannabis plant cuttings to grow at home – a move that advocates say will save money and help make legal patients self-sufficient. The Board made a small change to the ordinance requiring dispensaries to obtain a full conditional use permit. This will result in a longer permitting process, especially when a permit decision is appealed.

Los Angeles County will join twenty-one other California counties in issuing the Medical Marijuana ID Card this summer, part of a statewide program mandated by the State Assembly in 2004 (SB-420). The cards will assist law enforcement in identifying medical marijuana patients, although the ID cards are voluntary for patients.



ATTACHMENT NO. 7.53

## Chapter 7.55 MEDICAL MARIJUANA DISPENSARIES

## Part 1 GENERAL PROVISIONS

### 7.55.010 Definitions.

A. For the purposes of this chapter, the words and phrases set forth are defined and shall be construed as hereafter set out, unless it is apparent from the context than any such word or phrase has a different meaning.
B. Whenever any word or phrase used in this chapter is not defined herein but is defined in state law or regulation or in another section of the Los Angeles County Code, the definition set forth in such state law or regulation or such other section of the Los Angeles County Code is incorporated in this chapter as though set forth herein in full, and shall apply to such word and phrase used by not defined herein.
C. "County" means the County of Los Angeles.
D. "Existing owner" means an owner of a medical marijuana dispensary operating on the effective date of this ordinance.
E. "Manager" means the owner or other person designated by the owner to be the owner's on-site representative in a medical marijuana dispensary, who shall comply with the provisions set forth in Article 1 of this chapter.
F. "Medical marijuana dispensary" means any facility or location as defined in section 22.08.130 M of this code.
G. "Owner" or "operator" means the person, persons or legal entity having legal ownership of a business operating as a medical marijuana dispensary. Any reference in this chapter to "owning" means having existing owner status. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.020 License required.

A. Except as provided in B, below, every medical marijuana dispensary shall have a license provided for in Part 2 of this chapter. No person shall own or operate any medical marijuana dispensary at any location until a license has been procured pursuant to Part 2 of this chapter, and payment of an annual fee has been made therefore in accordance with section 7.14.010, under the appropriate heading.
B. Every existing owner of a medical marijuana dispensary shall comply with the licensing requirements of A, above, within 12 months of the effective date of this ordinance.
C. Every person employed as a manager of a medical marijuana dispensary shall first procure a license provided for in this chapter and pay an annual license fee in the amount set forth in section 7.14.010, under the appropriate heading. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.030 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter or the application of such provision to other persons or circumstances shall not be affected thereby. (Ord. 2006-0036 § 3 (part), 2006.)

## Part 2 LICENSING PROCEDURES

## Article 1 MEDICAL MARIJUANA DISPENSARIES

**D2 . 101**

### 7.55.040 Licensing--Hearing on application required.

The business license commission shall hold a public hearing on every application for a license required by section 7.55.020 A or B and shall give notice of such hearing as required by sections 7.10.100, 7.10.110, 7.10.120 and 7.10.130. (Ord. 2006-0036 § 3 (part), 2006.)

ATTACHMENT NO. 7.54

### 7.55.050 Prerequisites to issuance of license.

A. A license shall not be granted or issued pursuant to this article unless the application has obtained a conditional use permit, if one is required, by Title 22 of the code.
B. Each application form shall include a warning and disclaimer that shall include the following:
1. A warning that dispensary operators, managers and their employees may be subject to prosecution under federal law; and
2. A disclaimer that the county will not accept any legal responsibility or liability in connection with any approval of any license application and/or subsequent operation of any dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.060 License nontransferable.

Any license issued pursuant to this article shall be valid only for the medical marijuana dispensary which is the subject of the license and is not transferable to any other owner or location. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.070 License--Requirements for posting.

Any license issued pursuant to this article must be posted and exhibited at all times in an area that is visible to the public and clients of any medical marijuana dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

## Article 2 MEDICAL MARIJUANA DISPENSARY MANAGERS

### 7.55.080 Manager's license--Information required on application.

In addition to the requirements of section 7.06.020, an applicant for licensing as a manager of a medical marijuana dispensary shall also show:
A. All residential addresses for the five (5) years immediately preceding the date of application;
B. The name and address of the medical marijuana dispensary where the applicant intends to be employed and written proof of an offer of such employment;
C. Written statements of reference from at least three persons who have known the applicant for at least one year;
D. Written proof that the applicant is over the age of 18 years;
E. Applicant's height, weight and color of eyes and hair;
F. Two portrait photographs at least two inches by two inches taken within 60 days of the date of the application;
G. Business, occupation or employment history of the applicant for the five (5) years immediately preceding the date of the application;
H. The license history of the applicant, including but not limited to whether the applicant has had a license for any business or similar activity by this or any other county, by any city, or by the state revoked or suspended, and, if so, the reason or reasons therefor, and the business activity or occupation subsequent to such action or suspension or revocation;
I. All convictions, except for minor traffic violations, and the reasons therefor;
J. Such other identification and information determined necessary to discover the truth of the matters hereinabove specified as required to be set forth in the application; and
K. Each application form shall include a warning and disclaimer that shall include the following:
1. A warning that dispensary operators, managers and their employees may be subject to prosecution under federal law; and
2. A disclaimer that the county will not accept any legal responsibility or liability in connection with any approval of any license application and/or subsequent operation of any dispensary.
Each applicant acknowledges that the sheriff has the right to take fingerprints and additional photographs of the applicant and to confirm the height or weight of the applicant. (Ord. 2006-0036 § 3 (part), 2006.)



ATTACHMENT NO. 7.55

### 7.55.090 License nontransferable.

Any license issued pursuant to this article shall be valid only for use by the manager at the medical marijuana dispensary which is identified as the employer of the applicant and is not transferable to any other manager or for use at any other medical marijuana dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.100 License--Requirements for posting.

Any license issued pursuant to this article must be posted and exhibited at all times in an area that is visible to the public and clients of any medical marijuana dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

## Article 3 LIABILITY INSURANCE REQUIRED

### 7.55.110 Liability insurance--Requirements for medical marijuana dispensary license.

A. No license shall be issued or renewed under article 1 of this part unless the licensee carries and maintains in full force and effect a policy of insurance which meets or exceeds the requirements of this section, in a form approved by the County of Los Angeles and executed by a licensed insurance broker or agent. The policy of insurance shall insure the license against liability for damage to property and for injury to or death of any person as a result of activities conducted or occurring at the medical marijuana dispensary. The minimum liability limits shall not be less than $1,000,000 for each incident of damage to property or incident of injury to or death of a person, with a general aggregate limit of not less than $2,000,000. The policy shall name the County of Los Angeles as an additional insured.
B. The policy of insurance shall contain an endorsement providing that said policy shall not be canceled until notice in writing has been given to the office of the Treasurer and Tax Collector at least 30 days prior to the time the cancellation becomes effective.
C. If at any time the licensee's policy of insurance expires or is canceled, the license issued or renewed pursuant to Article 1 of this part will automatically be suspended, or revoked, pursuant to sections 7.08.240 and 7.08.250 of this code. (Ord. 2006-0036 § 3 (part), 2006.)

## Article 4 LICENSE REVOCATION

### 7.55.120 License--Permitted revocation.

The business license commission may revoke any license issued pursuant to this chapter upon a finding, based on a preponderance of the evidence, under the provisions of this title, that the licensee has violated any provision of Title 7 of the Los Angeles County Code. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.130 License--Mandatory revocation.

Notwithstanding any other provision of this Code, the commission shall revoke any license issued pursuant to this article upon finding, based upon a preponderance of the evidence, that the licensee has violated any provision of Title 7 of the Los Angeles County Code on two separate occasions within a 12-month period. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.140 Restrictions on licensing after revocation.



Whenever a license has been revoked pursuant to section 7.55.120 or 7.55.130, the former licensee, whether a person, partnership or corporation, shall not be eligible to apply for a new license for a period of one year from the effective date of such revocation. No application for a license provided for under Article 1 of this part shall be accepted or processed for any business that has had such a license revoked pursuant to this article within the preceding one-year period. (Ord. 2006-0036 § 3 (part), 2006.)

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### 7.55.160 Operation requirements generally.

Every establishment for which this chapter requires a license shall be maintained and operated in conformity with each and every provision of this chapter. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.170 Medical marijuana dispensary activity permitted only at medical marijuana dispensary establishment.

No establishment shall conduct any medical marijuana dispensary activity at any location requiring a license under this chapter unless such license has been issued and is valid. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.180 Hours of operation.

No establishment required to be licensed under this chapter shall be operated or any medical marijuana dispensary activity conducted therein outside of the hours specified in any conditional use permit issued pursuant to Title 22. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.190 Signs required.

A. A recognizable and readable sign which clearly identifies the medical marijuana dispensary shall be posted at the main entrance of any medical marijuana dispensary licensed under this chapter. Such sign shall comply with all other requirements of the Los Angeles County Code and any issued conditional use permit.
B. A recognizable and readable sign shall be posted indoors in a conspicuous location with the following warnings:
1. That the diversion of marijuana for non-medical purposes is a violation of state law;
2. That the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery; and
3. That loitering on and around the dispensary site is prohibited by California Penal Code section 647(e). (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.200 Alcohol prohibited.

Provision, sale or consumption of alcoholic beverages on the grounds of the medical marijuana dispensary, both interior and exterior, shall be prohibited. A person shall not enter, be or remain in any part of a medical marijuana dispensary licensed under this chapter while in the possession of, consuming or using any alcoholic beverage. The licensee, manager and/or every supervising employee shall not permit any such person to enter or remain on the premises. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.210 Minors.

It shall be unlawful for any dispensary to provide medical marijuana to any person under the age of 18 unless that person is a qualified patient or is a primary caregiver with a valid identification card in accordance with California State Health and Safety Code sections 11362.7. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.220 Manager required on premises.

Each medical marijuana dispensary licensed pursuant to this chapter shall, at all times that such dispensary is open, have present and on the premises a manager, as defined in section 7.55.010. The manager must be familiar with the requirements of this chapter and be capable of communicating the provisions of this chapter to employees and others conducting activities at the medical marijuana dispensary and to all actual or



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prospective clients of and visitors to the dispensary. The manager shall make an effort to immediately identify himself or herself to the sheriff or any other county official entering the medical marijuana establishment on official business. In the owner's absence, the manager shall be authorized to accept on behalf of the owner or any other person licensed pursuant to this chapter any notice issued to such owner or other licensed person pursuant to this chapter or to Title 7. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.230 Interfering with enforcement activities prohibited.

No person shall refuse, resist or attempt to resist the entrance of the sheriff or other county official into a medical marijuana dispensary in performance of official duty or shall refuse to obey any lawful order of the sheriff or other county official made in the performance of his or her duties under the code. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.250 Edibles.

Medical marijuana may be provided by a dispensary in an edible form, provided that the edibles meet all applicable county requirements, including but not limited to the medical marijuana dispensary obtaining a public eating license pursuant to Chapter 7.72 of this code. In addition, any beverage or edible produced, provided, or sold at the facility which contains marijuana shall be so identified, as part of the packaging, with a prominent and clearly legible warning advising that the product contains marijuana and that it is to be consumed only with a physician's recommendation. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.260 On-site consumption.

Medical marijuana may be consumed on site only as follows:
A. The smoking of medical marijuana shall be allowed provided that appropriate seating, restrooms, drinking water, air purification systems, and patient supervision are provided in a room or enclosure separate from the main room and entrance to the dispensary; and
B. Consumption of edibles by ingestion shall only be allowed subject to all applicable county requirements. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.270 Devices for inhalation.

Medical marijuana dispensaries may provide specific devices, contrivances, instruments, or paraphernalia necessary for inhaling medical marijuana, including but not limited to rolling papers and related tools, pipes, water pipes, and vaporizers. The equipment may only be provided to qualified patients or primary caregivers in accordance with California Health and Safety Code section 11364.5. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.280 Cultivation and Cuttings.

Marijuana shall not be grown at or on the site of any medical marijuana dispensary, except that cuttings of the marijuana plant may be kept or maintained on-site for distribution to qualified patients and primary caregivers as follows:
A. The cuttings shall not be utilized by the medical marijuana dispensary as a source for the provision of marijuana for consumption on-site.
B. For the purposes of this section, the term "cutting" shall mean a rootless piece cut from a marijuana plant, which is no more than six inches in length, and which can be used to grow another plant at a different location. (Ord. 2006-0036 § 3 (part), 2006.)



### 7.55.290 Loitering.

Medical Marijuana Dispensaries shall ensure the absence of loitering consistent with California Penal Code section 647(e). (Ord. 2006-0036 § 3 (part), 2006.)

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### 7.55.300 Security.

Medical marijuana dispensaries shall provide security as follows:
A. An adequate and operable security system that includes security cameras and alarms to the satisfaction of the Director of Regional Planning; and
B. At least one licensed security guard present at the dispensary at all times during business hours. All security guards must be licensed by the proper authorities and must possess a valid Security Guard identification card issued by the Department of Consumer Affairs at all times. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.310 Compliance with other requirements.

Medical marijuana dispensaries shall comply with all applicable provisions of California state law and with all applicable county requirements. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.320 Release of the County from liability.

The applicant(s) and licensee(s) under this chapter shall agree to forgo seeing to hold the county, and any of its officers, employees, or assigns, liable for any injuries or damages that result from any arrest or prosecution of medical marijuana dispensary owners, operators, managers, employees or clients for violation of local, state or federal laws. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.330 County indemnification.

The owner(s), operator(s), and/or manager(s) of the medical marijuana dispensaries shall indemnify and hold harmless the county and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by any adjacent or nearby property owners or other third parties due to the operations of the dispensary and for any claims brought by any of their clients for problems, injuries, damages or liabilities of any kind that may arise out of the distribution and/or on- or off-site use of marijuana provided at the dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

### 7.55.340 Liability for operation.

The provisions of this chapter shall not be construed to protect dispensary owners, operators, and employees, or their clients from prosecution pursuant to any laws that may prohibit the cultivation, sale, use, or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of marijuana remain violations of federal law as of the date of the ordinance creating this chapter and this chapter is not intended to, nor does it, protect any of the above described persons from arrest or prosecution under those federal laws. Owners, operators and licensees must assume any and all risk and any and all liability that may arise or result under state and federal criminal laws from operation of a medical marijuana dispensary. Further, to the fullest extent permitted by law, any actions taken under the provisions of this section by any public officer or employee of the County of Los Angeles or the County of Los Angeles itself, shall not become a personal liability of such person or liability of the county. (Ord. 2006-0036 § 3 (part), 2006.)



ATTACHMENT NO. 7.59

# ATTACHMENT #8

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**(Cite as: --- F.3d ----)**

**H**

Raich v. Gonzales
C.A.9 (Cal.),2007.

United States Court of Appeals,Ninth Circuit.
Angel McClary RAICH; John Doe, Number One; John Doe, Number Two, Plaintiffs-Appellants,
v.
Alberto R. GONZALES, Attorney General, as United States Attorney General; Karen Tandy,[FN*] as Administrator of the Drug Enforcement Administration, Defendants-Appellees.
**No. 03-15481.**

Argued and Submitted March 27, 2006.
Filed March 14, 2007.

**Background:** User and growers of marijuana for medical purposes under California Compassionate Use Act sought declaration that Controlled Substances Act (CSA) was unconstitutional as applied to them. The United States District Court for the Northern District of California, Martin J. Jenkins, J., 248 F.Supp.2d 918, denied plaintiffs' motion for preliminary injunction. Plaintiffs appealed and, following reversal, 352 F.3d 1222, remand was ordered, 125 S.Ct. 2195.

**Holdings:** The Court of Appeals, Pregerson, Circuit Judge, held that:

(1) user had standing;

(2) although user appeared to satisfy factual predicate for necessity defense, Court of Appeals could not issue preliminary injunction preventing enforcement of CSA on such basis;

(3) application of CSA to growers and users did not violate substantive due process guarantees; and

(4) user failed to demonstrate likelihood of success on her claim that CSA, as applied to prevent her use of medical marijuana, violated Tenth Amendment.

Affirmed.

Beam, Circuit Judge, sitting by designation, filed opinion concurring and dissenting.

**[1] Federal Civil Procedure 170A ⇨103.2**

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.2 k. In General; Injury or Interest. Most Cited Cases

**Federal Civil Procedure 170A ⇨103.3**

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.3 k. Causation; Redressability. Most Cited Cases
To satisfy the requirements of standing, under the constitutional article governing the judiciary, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision. U.S.C.A. Const. Art. 3, § 1 et seq.

**[2] Federal Civil Procedure 170A ⇨103.2**

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.2 k. In General; Injury or Interest. Most Cited Cases
For a plaintiff to satisfy the requirements of

standing, under the constitutional article governing the judiciary, the injury must be: (1) concrete and particularized, and (2) actual or imminent, not conjectural or hypothetical. U.S.C.A. Const. Art. 3, § 1 et seq.

**[3] Constitutional Law 92 ⚿42.1(3)**

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k41 Persons Entitled to Raise Constitutional Questions
92k42.1 Particular Statutes or Actions Attacked
92k42.1(3) k. Crime and Punishment. Most Cited Cases
User of medical marijuana pursuant to California Compassionate Use Act had standing to challenge constitutionality of Controlled Substances Act (CSA), even though user had not suffered past injury, where she was faced with threat that Government would seize her marijuana and prosecute her, her doctor testified that foregoing medical marijuana treatment might be fatal, and federal agents had previously seized and destroyed the medical marijuana of a former plaintiff. Controlled Substances Act, § 101 et seq., 21 U.S.C.A. § 801 et seq.; West's Ann.Cal.Health & Safety Code § 11362.5.

**[4] Federal Courts 170B ⚿767**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk763 Extent of Review Dependent on Nature of Decision Appealed from
170Bk767 k. Provisional Remedies; Injunctions; Receivers. Most Cited Cases
A district court's decision regarding preliminary injunctive relief is subject to limited review.

**[5] Federal Courts 170B ⚿767**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk763 Extent of Review Dependent on Nature of Decision Appealed from
170Bk767 k. Provisional Remedies; Injunctions; Receivers. Most Cited Cases

**Federal Courts 170B ⚿815**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk814 Injunction
170Bk815 k. Preliminary Injunction; Temporary Restraining Order. Most Cited Cases

**Federal Courts 170B ⚿862**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk855 Particular Actions and Proceedings, Verdicts and Findings
170Bk862 k. Equity in General and Injunction. Most Cited Cases
A district court's decision regarding preliminary injunctive relief should be reversed only if the court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact.

**[6] Federal Courts 170B ⚿862**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk855 Particular Actions and Proceedings, Verdicts and Findings
170Bk862 k. Equity in General and Injunction. Most Cited Cases

**Injunction 212 ⚿152**

212 Injunction

212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)4 Proceedings
212k152 k. Hearing and Determination. Most Cited Cases
A preliminary injunction must be supported by findings of fact, reviewed for clear error.

A preliminary injunction must be supported by findings of fact, reviewed for clear error.

**[7] Federal Courts 170B ⇐776**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
A district court's conclusions of law are reviewed de novo.

**[8] Injunction 212 ⇐138.1**

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.1 k. In General. Most Cited Cases

**Injunction 212 ⇐138.21**

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.21 k. Likelihood of Success, or Presence of Substantial Questions, Combined with Other Elements. Most Cited Cases
Two different criteria are used for determining whether preliminary injunctive relief is warranted, in that, under the traditional criteria, a plaintiff must show: (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to the plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest in certain cases, and an alternative test is also used, whereby a court may grant the injunction if the plaintiff demonstrates either: (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of hardships tips sharply in his favor.

**[9] Injunction 212 ⇐138.21**

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.21 k. Likelihood of Success, or Presence of Substantial Questions, Combined with Other Elements. Most Cited Cases
The two alternative formulations for determining whether preliminary injunctive relief is warranted represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases; they are not separate tests but rather outer reaches of a single continuum.

**[10] Constitutional Law 92 ⇐48(1)**

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k48 Presumptions and Construction in Favor of Constitutionality
92k48(1) k. In General. Most Cited Cases
An act of Congress ought not be construed to violate the Constitution if any other possible construction remains available.

**[11] Civil Rights 78 ⇐1457(5)**

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction

78k1457(5) k. Criminal Law Enforcement; Prisons. Most Cited Cases
Although user of medical marijuana appeared to satisfy factual predicate for necessity defense, in that if she were to obey Controlled Substances Act (CSA) rather than using marijuana pursuant to California Compassionate Use Act she would have to endure intolerable pain and perhaps would die, Court of Appeals could not issue preliminary injunction preventing enforcement of CSA on such basis, since oversight and enforcement of necessity-defense-based injunction would prove impracticable, in that ongoing vitality of injunction could hinge on factors including user's medical condition or advances in lawful medical technology. Controlled Substances Act, § 101 et seq., 21 U.S.C.A. § 801 et seq.; West's Ann.Cal.Health & Safety Code § 11362.5.

**[12] Criminal Law 110 ⇐38**

110 Criminal Law
110II Defenses in General
110k38 k. Compulsion or Necessity; Justification in General. Most Cited Cases
The necessity defense is an affirmative defense that removes criminal liability for violation of a criminal statute.

**[13] Criminal Law 110 ⇐38**

110 Criminal Law
110II Defenses in General
110k38 k. Compulsion or Necessity; Justification in General. Most Cited Cases
For purposes of the common law necessity defense to a criminal charge, necessity is essentially a justification for the prohibited conduct; the harm caused by the justified behavior remains a legally recognized harm that is to be avoided whenever possible.

**[14] Criminal Law 110 ⇐38**

110 Criminal Law
110II Defenses in General
110k38 k. Compulsion or Necessity; Justification in General. Most Cited Cases
A common law necessity defense singles out conduct that is otherwise criminal, which under the circumstances is socially acceptable and which deserves neither criminal liability nor even censure.

**[15] Constitutional Law 92 ⇐251.2**

92 Constitutional Law
92XII Due Process of Law
92k251.2 k. Regulations and Deprivations in General. Most Cited Cases
Although the Fifth Amendment's Due Process Clause states only that "[n]o person shall be deprived of life, liberty, or property, without due process of law," it provides substantive protections for certain unenumerated fundamental rights. U.S.C.A. Const.Amend. 5.

**[16] Constitutional Law 92 ⇐258(3.1)**

92 Constitutional Law
92XII Due Process of Law
92k256 Criminal Prosecutions
92k258 Creation or Definition of Offense
92k258(3) Particular Statutes and Ordinances
92k258(3.1) k. In General. Most Cited Cases

**Controlled Substances 96H ⇐51**

96H Controlled Substances
96HII Offenses
96Hk48 Defenses
96Hk51 k. Medical Necessity. Most Cited Cases
Application of Controlled Substances Act (CSA) to growers and users of marijuana for medical purposes, as otherwise authorized by California Compassionate Use Act, did not violate substantive due process guarantees, since right to decide on physician's advice to use medical marijuana to preserve bodily integrity, avoid intolerable pain, and preserve life, when all other prescribed medications and remedies had failed, was not deeply rooted in United States' history and tradition and implicit in concept of ordered liberty, even though 11 states had passed laws decriminalizing marijuana for the seriously ill, others had passed resolutions recognizing that marijuana might have

therapeutic value, and yet others had permitted limited use through closely monitored experimental treatment programs. U.S.C.A. Const.Amend. 5; Controlled Substances Act, § 101 et seq., 21 U.S.C.A. § 801 et seq.; West's Ann.Cal.Health & Safety Code § 11362.5.

Application of Controlled Substances Act (CSA) to growers and users of marijuana for medical purposes, as otherwise authorized by California Compassionate Use Act, did not violate substantive due process guarantees, since right to decide on physician's advice to use medical marijuana to preserve bodily integrity, avoid intolerable pain, and preserve life, when all other prescribed medications and remedies had failed, was not deeply rooted in United States' history and tradition and implicit in concept of ordered liberty, even though 11 states had passed laws decriminalizing marijuana for the seriously ill, others had passed resolutions recognizing that marijuana might have therapeutic value, and yet others had permitted limited use through closely monitored experimental treatment programs. U.S.C.A. Const.Amend. 5; Controlled Substances Act, § 101 et seq., 21 U.S.C.A. § 801 et seq.; West's Ann.Cal.Health & Safety Code § 11362.5.

**[17] Constitutional Law 92 ⚿252.5**

92 Constitutional Law
92XII Due Process of Law
92k252.5 k. Rights, Interests, Benefits, or Privileges Involved, in General. Most Cited Cases
The mere enactment of a law, state or federal, that prohibits certain behavior does not necessarily mean that the behavior is not deeply rooted in this country's history and traditions, for purposes of determining whether the right is protected by substantive due process. U.S.C.A. Const.Amend. 5.

**[18] Civil Rights 78 ⚿1457(5)**

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction
78k1457(5) k. Criminal Law Enforcement; Prisons. Most Cited Cases
User of medical marijuana failed to demonstrate likelihood of success on her claim that Controlled Substances Act (CSA), as applied to prevent use of medical marijuana under California Compassionate Use Act, violated Tenth Amendment, and district court thus did not abuse its discretion in denying user's motion for preliminary injunction. U.S.C.A. Const.Amend. 10; Controlled Substances Act, § 101 et seq., 21 U.S.C.A. § 801 et seq.; West's Ann.Cal.Health & Safety Code § 11362.5.

**[19] States 360 ⚿4.16(2)**

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(2) k. Federal Laws Invading State Powers. Most Cited Cases
Generally speaking, under the Tenth Amendment, a power granted to Congress trumps a competing claim based on a state's police powers. U.S.C.A. Const.Amend. 10.

**[20] Federal Courts 170B ⚿611**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk611 k. Necessity of Presentation in General. Most Cited Cases
The general rule that the Court of Appeals will not consider arguments that are raised for the first time on appeal is subject to the exceptions that the Court may consider a new issue if: (1) there are exceptional circumstances why the issue was not raised in the trial court; (2) the new issue arises while the appeal is pending because of a change in the law; or (3) the issue presented is a pure question of law and the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court.

**[21] Federal Courts 170B ⚿611**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk611 k. Necessity of Presentation in General. Most Cited Cases
The Court of Appeals assesses prejudice to a party, for purposes of deciding whether an issue is waived if raised for the first time on appeal, by asking whether the party is in a different position than it would have been absent the alleged deficiency.

**[22] Federal Courts 170B ⇐611**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk611 k. Necessity of Presentation in General. Most Cited Cases
Even if a case falls within one of the exceptions to the general rule that the Court of Appeals will not consider arguments that are raised for the first time on appeal, the Court must still decide whether the particular circumstances of the case overcome the presumption against hearing new arguments.

**[23] Federal Courts 170B ⇐614**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk614 k. Nature and Theory of Cause. Most Cited Cases
User of medical marijuana waived argument that Controlled Substances Act (CSA) did not prohibit her from possessing marijuana pursuant to a doctor's order, even though such issue was pure question of law and Government would suffer no prejudice as result of failure to raise issue in trial court, where user did not raise such argument below, and Court of Appeals had instructed parties to brief only certain claims that did not include such argument. Controlled Substances Act, §§ 102(21), 404(a), 21 U.S.C.A. §§ 802(21), 844(a).

Robert A. Raich, (briefed) Oakland, CA and Randy E. Barnett, (argued) Boston University School of Law, Boston, MA, for the plaintiffs-appellants.
Mark T. Quinlivan, Assistant United States Attorney, Boston, MA, for the defendants-appellees.

Appeal from the United States District Court for the Northern District of California; Martin J. Jenkins, District Judge, Presiding. D.C. No. CV-02-04872-MJJ.

Before PREGERSON, C. ARLEN BEAM,[FN**] and PAEZ, Circuit Judges.
PREGERSON, Circuit Judge.
*1 Plaintiff-Appellant Angel McClary Raich ("Raich ") is a seriously ill individual who uses marijuana for medical purposes on the recommendation of her physician. Such use is permitted under California law. The remaining plaintiffs-appellants assist Raich by growing marijuana for her treatment.

Appellants seek declaratory and injunctive relief based on the alleged unconstitutionality of the Controlled Substances Act, and a declaration that medical necessity precludes enforcement of the Controlled Substances Act against them. On March 5, 2003, the district court denied appellants' motion for a preliminary injunction. We hear this matter on remand following the Supreme Court's decision in *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005). For the reasons set forth below, we affirm the district court.

## STATUTORY SCHEMES

### I. *The Controlled Substances Act*

Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. No. 91-513, 84 Stat. 1236, to create a comprehensive drug enforcement regime it called the Controlled Substances Act, 21 U.S.C. § 801-971. Congress

established five "schedules" of "controlled substances." *See* 21 U.S.C. § 802(6). Controlled substances are placed on a particular schedule based on their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance. *See* 21 U.S.C. § 812(b). Marijuana is a Schedule I controlled substance. 21 U.S.C. § 812(c), Sched. I(c)(10). For a substance to be designated a Schedule I controlled substance, it must be found: (1) that the substance "has a high potential for abuse "; (2) that the substance "has no currently accepted medical use in treatment in the United States"; and (3) that "[t]here is a lack of accepted safety for use of the drug or other substance under medical supervision." 21 U.S.C. § 812(b)(1). The Controlled Substances Act sets forth procedures by which the schedules may be modified. *See* 21 U.S.C. § 811(a).

Under the Controlled Substances Act, it is unlawful to knowingly or intentionally "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance," except as otherwise provided in the statute. 21 U.S.C. § 841(a)(1). Possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful. *See* 21 U.S.C. § 844(a).

II. *California's Compassionate Use Act of 1996*

California voters passed Proposition 215 in 1996, which is codified as the Compassionate Use Act of 1996 ("Compassionate Use Act"). *See* Cal. Health & Safety Code § 11362.5. The Compassionate Use Act is intended to permit Californians to use marijuana for medical purposes by exempting patients, primary caregivers, and physicians from liability under California's drug laws. The Act explicitly states that its purpose is to
ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer , anorexia, AIDS, chronic pain, spasticity, glaucoma , arthritis, migraine, or any other illness for which marijuana provides relief.

*2 *Id.* § 11362.5(b)(1)(A). Another purpose of the Compassionate Use Act is "[t]o ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." *Id.* § 11362.5(b)(1)(B). The Compassionate Use Act strives "[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." *Id.* § 11362.5(b)(1)(C).

To achieve its goal, the Compassionate Use Act exempts from liability under California's drug laws " a patient, or ... a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." *Id.* § 11362.5(d).

**FACTUAL & PROCEDURAL HISTORY**

Appellant Angel McClary Raich is a Californian who uses marijuana for medical treatment. Raich has been diagnosed with more than ten serious medical conditions, including an inoperable brain tumor, a seizure disorder, life-threatening weight loss, nausea, and several chronic pain disorders. Raich's doctor, Dr. Frank Henry Lucido, testified that he had explored virtually every legal treatment alternative, and that all were either ineffective or resulted in intolerable side effects. Dr. Lucido provided a list of thirty-five medications that were unworkable because of their side effects.

Marijuana, on the other hand, has proven to be of great medical value for Raich. Raich has been using marijuana as a medication for nearly eight years, every two waking hours of every day. Dr. Lucido states that, for Raich, foregoing marijuana treatment may be fatal. As the district court put it, " [t]raditional medicine has utterly failed[Raich]." *Raich v. Ashcroft,* 248 F.Supp.2d 918, 921 (N.D.Cal.2003).

Raich is unable to cultivate marijuana for her own use. Instead, Raich's caregivers, John Doe Number One and John Doe Number Two, cultivate it for her. They provide marijuana to Raich free of charge. They have joined this action as plaintiffs anonymously in order to protect Raich's access to medical marijuana.

This action arose in response to a law enforcement raid on the home of another medical marijuana user, former plaintiff-appellant Diane Monson.[FN1] On August 15, 2002, Butte County Sheriff's Department deputies, the Butte County District Attorney, and agents from the federal Drug Enforcement Agency ("DEA") came to Monson's home. After DEA agents took control of Monson's six marijuana plants, a three-hour standoff between state and federal authorities ensued. The Butte County deputies and district attorney concluded that Monson's use of marijuana was legal under the Compassionate Use Act. The DEA agents, after conferring with the U.S. Attorney for the Eastern District of California, concluded that Monson possessed the plants in violation of federal law. The DEA agents seized and destroyed Monson's six marijuana plants.

*3 Fearing raids in the future and the prospect of being deprived of their medicinal marijuana, Raich, Monson, and the John Doe plaintiffs sued the United States Attorney General and the Administrator of the DEA in federal district court on October 9, 2002. The suit sought declaratory and injunctive relief. Specifically, plaintiffs-appellants argued: (1) that the Controlled Substances Act was unconstitutional as applied to them because the legislation exceeded Congress's Commerce Clause authority; (2) that through the Controlled Substances Act, Congress impermissibly exercised a police power that is reserved to the State of California under the Tenth Amendment; (3) that the Controlled Substances Act unconstitutionally infringed their fundamental rights protected by the Fifth and Ninth Amendments; and (4) that the Controlled Substances Act could not be enforced against them because their allegedly unlawful conduct was justified under the common law doctrine of necessity.

On October 30, 2002, the plaintiffs-appellants moved for a preliminary injunction. On March 4, 2003, the district court denied the motion by a published order. *See Raich v. Ashcroft,* 248 F.Supp.2d 918. The district court found that, " despite the gravity of plaintiffs' need for medical cannabis, and despite the concrete interest of California to provide it for individuals like them," the appellants had not established the required " ' irreducible minimum' of a likelihood of success on the merits under the law of this Circuit." *Id.* at 931.

On December 16, 2003, we reversed and remanded this matter to the district court to enter a preliminary injunction. *See Raich v. Ashcroft,* 352 F.3d 1222, 1235 (9th Cir.2003). We held that the plaintiffs-appellants had demonstrated a strong likelihood of success on the merits of their claim that the Controlled Substances Act, as applied to them, exceeded Congress's Commerce Clause authority. *See id.* at 1234. We did not reach plaintiffs-appellants' remaining arguments in favor of the preliminary injunction. *See id.* at 1227. The Government timely petitioned the Supreme Court for a writ of certiorari. The Supreme Court granted certiorari on June 28, 2004. *See Ashcroft v. Raich,* 542 U.S. 936, 124 S.Ct. 2909, 159 L.Ed.2d 811 (2004).

On June 6, 2005, the Supreme Court vacated our opinion and held that Congress's Commerce Clause authority includes the power to prohibit purely intrastate cultivation and use of marijuana. *See Gonzales v. Raich,* 125 S.Ct. at 2215. The Court remanded the case to us to address plaintiffs-appellants's remaining legal theories in support of a preliminary injunction. *See id.* On remand, Raich renews her claims based on common law necessity, fundamental rights protected by the Fifth and Ninth Amendments, and rights reserved to the states under the Tenth Amendment. She also argues for the first time that the Controlled Substances Act, by its terms, does not prohibit her from possessing and using marijuana if permitted to do so under state law. We have jurisdiction over this interlocutory appeal under 28 U.S.C. § 1292(a)(1).

**STANDING & STANDARD OF REVIEW**

*4 [1][2] To satisfy the requirements of constitutional standing, "the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Mujahid v. Daniels,* 413 F.3d 991, 994 (9th Cir.2005) (citing *Spencer v. Kemna,* 523 U.S. 1, 7, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998)). Furthermore, the injury must be: (1) concrete and particularlized, and (2) actual or imminent, not conjectural or hypothetical. *See United States v. Antelope,* 395 F.3d 1128, 1132 (9th Cir.2005).

[3] We are convinced that the requirements of constitutional standing have been met here.[FN2] Although Raich has not suffered any past injury, she is faced with the threat that the Government will seize her medical marijuana and prosecute her for violations of federal drug law. The threat posed by deprivation of her medical treatment is serious and concrete: Raich's doctor testified that foregoing medical marijuana treatment might be fatal. The threat is not speculative or conjectural: DEA agents previously seized and destroyed the medical marijuana of former plaintiff-appellant Diane Monson. Monson's withdrawal from this action does not change the fact that DEA agents have-and may again-seize and destroy medical marijuana possessed by gravely ill Californians, including Raich. Finally, it is clear that Raich's threatened injury may be fairly traced to the defendants, and that a favorable injunction from this court would redress Raich's threatened injury.

[4][5][6][7] A district court's decision regarding preliminary injunctive relief is subject to limited review. *See Harris v. Bd. of Supervisors,* 366 F.3d 754, 760 (9th Cir.2004). The court should be reversed only if it abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact. *See id.* A preliminary injunction must be supported by findings of fact, reviewed for clear error. *See Hawkins v. Comparet-Cassani,* 251 F.3d 1230, 1239 (9th Cir.2001). The district court's conclusions of law are reviewed de novo. *See Brown v. Cal. Dep't of Transp.,* 321 F.3d 1217, 1221 (9th Cir.2003).

**DISCUSSION**

[8] "The standard for granting a preliminary injunction balances the plaintiff's likelihood of success against the relative hardship to the parties." *Clear Channel Outdoor, Inc. v. City of Los Angeles,* 340 F.3d 810, 813 (9th Cir.2003). We have two different criteria for determining whether preliminary injunctive relief is warranted. "Under the traditional criteria, a plaintiff must show (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to[the] plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases). " *See Save Our Sonoran, Inc. v. Flowers,* 408 F.3d 1113, 1120 (9th Cir.2005) (internal quotations omitted). We also use an alternative test whereby a court may grant the injunction if the plaintiff demonstrates either: (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of hardships tips sharply in his favor. *See id.*

*5 [9] The two alternative formulations "represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. They are not separate tests but rather outer reaches of a single continuum." *Baby Tam & Co. v. City of Las Vegas,* 154 F.3d 1097, 1100 (9th Cir.1998) (internal quotation marks and citations omitted).

I. *Common Law Necessity*

[10] Raich first argues that she has a likelihood of success on the merits of her claim that the common law doctrine of necessity bars the federal government from enforcing the Controlled Substances Act against her medically-necessary use of marijuana.[FN3] Raich avers that she is faced with a choice of evils: to either obey the Controlled Substances Act and endure excruciating pain and possibly death, or violate the terms of the

Controlled Substances Act and obtain relief from her physical suffering.

The necessity defense "traditionally covered the situation where physical forces beyond the actor's control rendered illegal conduct the lesser of two evils" and the actor had no "reasonable, legal alternative to violating the law." *United States v. Bailey,* 444 U.S. 394, 410, 100 S.Ct. 624, 62 L.Ed.2d 575 (1980); *see also* 2 Wayne R. LaFave, Substantive Criminal Law § 10.1 at 116 (2d ed. 2003 & Supp.2005). As we have recognized,
In some sense, the necessity defense allows us to act as individual legislatures, amending a particular criminal provision or crafting a one-time exception to it, subject to court review, when a real legislature would formally do the same under those circumstances. For example, by allowing prisoners who escape a burning jail to claim the justification of necessity, we assume the lawmaker, confronting this problem, would have allowed for an exception to the law proscribing prison escapes.

*United States v. Schoon,* 971 F.2d 193, 196-97 (9th Cir.1991).

The Supreme Court has recognized that a common law necessity defense exists even when a statute does not explicitly include the defense. *See Bailey,* 444 U.S. at 425, 100 S.Ct. 624 (Blackmun, J., dissenting) (having "no difficulty in concluding that Congress intended the defenses of duress and necessity to be available" to prison escape defendant); *id.* at 415 n. 11, 100 S.Ct. 624 (Rehnquist, J., majority opinion) (noting that the majority's "principal difference with the dissent, therefore, is not as to the existence of [the necessity] defense but as to the importance of surrender as an element of it"). [FN4]

A. *Whether Raich Satisfies the Requirements of the Common Law Necessity Defense* [FN5]

Here, although we ultimately conclude that Raich is not entitled to injunctive relief on the basis of her common law necessity claim, we briefly note that, in light of the compelling facts before the district court, Raich appears to satisfy the threshold requirements for asserting a necessity defense under our case law. We have set forth the following general standards for a necessity defense:
*6 As a matter of law, a defendant must establish the existence of four elements to be entitled to a necessity defense: (1) that he was faced with a choice of evils and chose the lesser evil; (2) that he acted to prevent imminent harm; (3) that he reasonably anticipated a causal relation between his conduct and the harm to be avoided; and (4) that there were no other legal alternatives to violating the law.

*United States v. Aguilar,* 883 F.2d 662, 693 (9th Cir.1989).

We first ask whether Raich was faced with a choice of evils and whether she chose the lesser evil. Raich's physician presented uncontroverted evidence that Raich "cannot be without cannabis as medicine" because she would quickly suffer " precipitous medical deterioration" and "could very well" die. If Raich obeys the Controlled Substances Act she will have to endure intolerable pain including severe chronic pain in her face and jaw muscles due to temporomandibular joint dysfunction and bruxism, severe chronic pain and chronic burning from fibromyalgia that forces her to be flat on her back for days, excruciating pain from non-epileptic seizures, heavy bleeding and severely painful menstrual periods due to a uterine fibroid tumor, and acute weight loss resulting possibly in death due to a life-threatening wasting disorder.[FN6] Alternatively, Raich can violate the Controlled Substances Act and avoid the bulk of those debilitating pains by using marijuana. The evidence persuasively demonstrates that, in light of her medical condition, Raich satisfies the first prong of the necessity defense.

We next ask whether Raich is acting to prevent imminent harm. All medical evidence in the record suggests that, if Raich were to stop using marijuana, the acute chronic pain and wasting disorders would immediately resume. The Government does not dispute the severity of her conditions or the likelihood that her pain would recur if she is deprived of marijuana. Raich has therefore established that the harm she faces is imminent.

Prong three asks whether Raich reasonably anticipated a causal connection between her unlawful conduct and the harm to be avoided. We believe that Raich's belief in the causal connection is reasonable. Here, Raich's licensed physician testified to the causal connection between her physical condition and her need to use marijuana. The Government did not dispute this medical evidence. Because Raich has clearly demonstrated the medical correlation, she has satisfied prong three.[FN7]

Finally, we ask whether Raich had any legal alternatives to violating the law. Dr. Lucido's testimony makes clear that Raich had no legal alternatives: Raich "has tried essentially all other legal alternatives to cannabis and the alternatives have been ineffective or result in intolerable side effects." Raich's physician explained that the intolerable side effects included violent nausea, shakes, itching, rapid heart palpitations, and insomnia. We agree that Raich does not appear to have any legal alternative to marijuana use.[FN8]

*7 Although Raich appears to satisfy the factual predicate for a necessity defense, it is not clear whether the Supreme Court's decision in *United States v. Oakland Cannabis Buyers' Cooperative* forecloses a necessity defense to a prosecution of a seriously ill defendant under the Controlled Substances Act. 532 U.S. 483, 484 n. 7, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001). Similarly, whether the Controlled Substances Act encompasses a legislative "determination of values," *id.* at 491, 121 S.Ct. 1711, that would preclude a necessity defense is also an unanswered question. These are difficult issues, and in light of our conclusion below that Raich's necessity claim is best resolved within the context of a specific prosecution under the Controlled Substances Act, where the issue would be fully joined, we do not attempt to answer them here.

B. *Whether a Viable Necessity Defense Gives Raich a Likelihood of Success on the Merits on this Action for Injunctive Relief*

[11] Irrespective of the compelling factual basis for Raich's necessity claim, whether Raich has a likelihood of success on the merits in this action for injunctive relief is a different question. We conclude that Raich has not demonstrated that she will likely succeed in obtaining injunctive relief on the necessity ground.

[12][13][14] The necessity defense is an affirmative defense that removes criminal liability for violation of a criminal statute. *See* 2 LaFave, Substantive Criminal Law § 9.1(a) (2d ed. 2003 & Supp.2005). Necessity is essentially a justification for the prohibited conduct: the "harm caused by the justified behavior remains a legally recognized harm that is to be avoided whenever possible." Paul H. Robinson, Criminal Law Defenses § 24(a) (1984 & Supp.2006-2007). A common law necessity defense thus singles out conduct that is "therwise criminal, which under the circumstances is socially acceptable and which deserves neither criminal liability nor even censure." LaFave, Substantive Criminal Law § 9.1(a)(3) (2d ed. 2003 & Supp.2005) (quotation omitted). The necessity defense serves to protect the defendant from criminal liability.

Though a necessity defense may be available in the context of a criminal prosecution, it does not follow that a court should prospectively enjoin enforcement of a statute. Raich's violation of the Controlled Substances Act is a legally recognized harm, but the necessity defense shields Raich from liability for criminal prosecution during such time as she satisfies the defense. Thus, if Raich were to make a miraculous recovery that obviated her need for medical marijuana, her necessity-based justification defense would no longer exist. Similarly, if Dr. Lucido found an alternative treatment that did not violate the law-a legal alternative to violating the Controlled Substances Act-Raich could no longer assert a necessity defense. That is to say, a necessity defense is best considered in the context of a concrete case where a statute is allegedly violated, and a specific prosecution results from the violation. Indeed, oversight and enforcement of a necessity defense-based injunction would prove impracticable: the ongoing vitality of the injunction could hinge on factors including Raich's medical

condition or advances in lawful medical technology. Nothing in the common law or our cases suggests that the existence of a necessity defense empowers this court to enjoin the enforcement of the Controlled Substances Act as to one defendant.

***8** Because common law necessity prevents criminal liability, but does not permit us to enjoin prosecution for what remains a legally recognized harm, we hold that Raich has not shown a likelihood of success on the merits on her medical necessity claim for an injunction.[FN9]

### II. *Substantive Due Process*

Raich contends that the district court erred by failing to protect her fundamental rights. Her argument focuses on unenumerated rights protected by the Fifth and Ninth Amendments to the Constitution under a theory of substantive due process.[FN10]

#### A. *Substantive Due Process, Generally*

[15] Although the Fifth Amendment's Due Process Clause states only that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law," *see* U.S. Const. amend. V, it unquestionably provides substantive protections for certain unenumerated fundamental rights.[FN11] " The Due Process Clause guarantees more than fair process, and the 'liberty' it protects includes more than the absence of physical restraint." *Washington v. Glucksberg,* 521 U.S. 702, 719, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997); *see also Planned Parenthood of S.E. Penn. v. Casey,* 505 U.S. 833, 847, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) ("It is tempting, as a means of curbing the discretion of federal judges, to suppose that liberty encompasses no more than those rights already guaranteed to the individual against federal interference by the express provisions of the first eight Amendments to the Constitution. But of course this Court has never accepted that view." (internal citation omitted)). As Justice Harlan put it over forty years ago:

[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty ' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment.

*Poe v. Ullman,* 367 U.S. 497, 543, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961) (Harlan, J., dissenting) (citations omitted); *see also Casey,* 505 U.S. at 849, 112 S.Ct. 2791 (noting that Justice Harlan's position was adopted by the Court in *Griswold v. Connecticut,* 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965)). These contentions find support in the Ninth Amendment, which provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. amend. IX.

In *Glucksberg,* the Supreme Court set forth the two elements of the substantive due process analysis.

First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," and " implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." Second, we have required in substantive-due-process cases a "careful description " of the asserted fundamental liberty interest.

***9** *Glucksberg,* 521 U.S. at 720-21, 117 S.Ct. 2258 (citations omitted).

The Supreme Court has a long history of recognizing unenumerated fundamental rights as protected by substantive due process, even before the term evolved into its modern usage. *See, e.g., Casey,* 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (to have an abortion); *Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) (same);

*Eisenstadt v. Baird,* 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972) (to use contraception); *Griswold,* 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (to use contraception, to marital privacy); *Loving v. Virginia,* 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967) (to marry); *Rochin v. California,* 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952) (to bodily integrity); *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942) (to have children); *Pierce v. Society of Sisters,* 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925) (to direct the education and upbringing of one's children); *Meyer v. Nebraska,* 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) (same). But the Court has cautioned against the doctrine's expansion. *See Glucksberg,* 521 U.S. at 720, 117 S.Ct. 2258 (stating that the Court must restrain the expansion of substantive due process "because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended" and because judicial extension of constitutional protection for an asserted substantive due process right "place [s] the matter outside the arena of public debate and legislative action" (citations omitted)); *Reno v. Flores,* 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993) (noting that "[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field" (quoting *Collins v. Harker Heights,* 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992))).

Bearing that rubric in mind, we consider Raich's substantive due process claim. In the present case, it is helpful to begin with the second step-the description of the asserted fundamental right-before determining whether the right is deeply rooted in this nation's history and traditions and implicit in the concept of ordered liberty.

B. *Breadth of the Fundamental Right*

*Glucksberg* instructs courts to adopt a narrow definition of the interest at stake. *See* 521 U.S. at 722, 117 S.Ct. 2258 ("[W]e have a tradition of carefully formulating the interest at stake in substantive-due-process cases."); *see also Flores,* 507 U.S. at 302[, 113 S.Ct. 1439] (noting that the asserted liberty interest must be construed narrowly to avoid unintended consequences). Substantive due process requires a "careful description of the asserted fundamental liberty interest." *Glucksberg,* 521 U.S. at 721, 117 S.Ct. 2258 (quotation and citations omitted).

*Glucksberg* involved a substantive due process challenge to Washington state's ban on assisted suicide. *See id.* at 705-06, 117 S.Ct. 2258. The Court in *Glucksberg* rejected the suggestion that the interest at stake was the "right to die" or "the right to choose a humane, dignified death," and instead held that the narrow question before the Court was " whether the 'liberty' specially protected by the Due Process Clause includes a right to commit suicide which itself includes a right to assistance in doing so." *Id.* at 722-23, 117 S.Ct. 2258.

***10** Another case that considered and rejected several asserted fundamental rights involved unaccompanied alien juveniles who are in the custody of immigration authorities. *See Flores,* 507 U.S. at 294[, 113 S.Ct. 1439]. The *Flores* Court rejected the proposed fundamental right of " freedom from physical restraint" because it was not an accurate depiction of the true issue in the case. *See Flores,* 507 U.S. at 302[, 113 S.Ct. 1439]. The Court also rejected the formulation of the "right of a child to be released from all other custody into the custody of its parents, legal guardian, or even close relatives." *Id.* Instead, the *Flores* Court examined the narrow "right of a child who has no available parent, close relative, or legal guardian, and for whom the government is responsible, to be placed in the custody of a willing-and-able private custodian rather than of a government-operated or government-selected child-care institution." *Id.; see also Lawrence v. Texas,* 539 U.S. 558, 578, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003) (recognizing narrowly defined fundamental right to engage in consensual sexual activity, including homosexual sodomy, in the home without government intrusion).

C. *Raich's Asserted Fundamental Interest*

Raich asserts that she has a fundamental right to " mak[e] life-shaping medical decisions that are

necessary to preserve the integrity of her body, avoid intolerable physical pain, and preserve her life." We note that Raich's carefully crafted interest comprises several fundamental rights that have been recognized at least in part by the Supreme Court. *See Lawrence,* 539 U.S. at 574, 123 S.Ct. 2472 (recognizing that "the Constitution demands [respect] for the autonomy of the person in making [personal] choices"); *Casey,* 505 U.S. at 849, 112 S.Ct. 2791 (noting importance of protecting "bodily integrity"); *id.* at 852, 112 S.Ct. 2791 (observing that a woman's "suffering is too intimate and personal" for government to compel such suffering by requiring woman to carry a pregnancy to term).

Yet, Raich's careful statement does not narrowly and accurately reflect the right that she seeks to vindicate. Conspicuously missing from Raich's asserted fundamental right is its centerpiece: that she seeks the right to use *marijuana* to preserve bodily integrity, avoid pain, and preserve her life. [FN12] As in *Glucksberg, Flores*, and *Cruzan,* the right must be carefully stated and narrowly identified before the ensuing analysis can proceed. Accordingly, we will add the centerpiece-the use of marijuana-to Raich's proposed right. [FN13]

Accordingly, the question becomes whether the liberty interest specially protected by the Due Process Clause embraces a right to make a life-shaping decision on a physician's advice to use medical marijuana to preserve bodily integrity, avoid intolerable pain, and preserve life, when all other prescribed medications and remedies have failed.

D. *Whether the Asserted Right is "Deeply Rooted in This Nation's History and Tradition" and "Implicit in the Concept of Ordered Liberty"*

*11 [16] We turn to whether the asserted right is " deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." *Glucksberg,* 521 U.S. at 720-21, 117 S.Ct. 2258.

It is beyond dispute that marijuana has a long history of use-medically and otherwise-in this country. Marijuana was not regulated under federal law until Congress passed the Marihuana Tax Act of 1937, Pub.L. No. 75-348, 50 Stat. 551 (repealed 1970), and marijuana was not prohibited under federal law until Congress passed the Controlled Substances Act in 1970. *See Gonzales v. Raich,* 125 S.Ct. at 2202. There is considerable evidence that efforts to regulate marijuana use in the early-twentieth century targeted recreational use, but permitted medical use. *See* Richard J. Bonnie & Charles H. Whitebread, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition,* 56 Va. L.Rev. 971, 1010, 1027, 1167 (1970) (noting that all twenty-two states that had prohibited marijuana by the 1930s created exceptions for medical purposes). By 1965, although possession of marijuana was a crime in all fifty states, almost all states had created exceptions for "persons for whom the drug had been prescribed or to whom it had been given by an authorized medical person." *Leary v. United States,* 395 U.S. 6, 16-17, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969).

[17] The history of medical marijuana use in this country took an about-face with the passage of the Controlled Substances Act in 1970. Congress placed marijuana on Schedule I of the Controlled Substances Act, taking it outside of the realm of all uses, including medical, under federal law. As the Supreme Court noted in *Gonzales v. Raich,* 125 S.Ct. at 2199, no state permitted medical marijuana usage until California's Compassionate Use Act of 1996. Thus, from 1970 to 1996, the possession or use of marijuana-medically or otherwise-was proscribed under state and federal law.[FN14]

Raich argues that the last ten years have been characterized by an emerging awareness of marijuana's medical value. She contends that the rising number of states that have passed laws that permit medical use of marijuana or recognize its therapeutic value is additional evidence that the right is fundamental. Raich avers that the asserted right in this case should be protected on the " emerging awareness" model that the Supreme Court used in *Lawrence v. Texas,* 539 U.S. at 571, 123 S.Ct. 2472.

The *Lawrence* Court noted that, when the Court had decided *Bowers v. Hardwick,* 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), "[twenty-four] States and the District of Columbia had sodomy laws." *Lawrence,* 539 U.S. at 572, 123 S.Ct. 2472. By the time a similar challenge to sodomy laws arose in *Lawrence* in 2004, only thirteen states had maintained their sodomy laws, and there was a noted "pattern of nonenforcement." *Id.* at 573, 123 S.Ct. 2472. The Court observed that "times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress." *Id.* at 579, 123 S.Ct. 2472.

***12** Though the *Lawrence* framework might certainly apply to the instant case, the use of medical marijuana has not obtained the degree of recognition today that private sexual conduct had obtained by 2004 in *Lawrence.* Since 1996, ten states other than California have passed laws decriminalizing in varying degrees the use, possession, manufacture, and distribution of marijuana for the seriously ill. *See* Alaska Stat. § 11.71.090; Colo.Rev.Stat. § 18-18-406.3; Haw.Rev.Stat. § 329-125; Me.Rev.Stat. Ann. tit. 22, § 2383-B; Mont.Code Ann. § 50-46-201; Nev.Rev.Stat. § 453A.200; Or.Rev.Stat. § 475.319; R.I. Gen. Laws § 21-28.6-4; Vt. Stat. Ann. tit. 18, § 4474b; Wash. Rev.Code § 69.51A.040. Other states have passed resolutions recognizing that marijuana may have therapeutic value, and yet others have permitted limited use through closely monitored experimental treatment programs.[FN15]

We agree with Raich that medical and conventional wisdom that recognizes the use of marijuana for medical purposes is gaining traction in the law as well. But that legal recognition has not yet reached the point where a conclusion can be drawn that the right to use medical marijuana is "fundamental" and "implicit in the concept of ordered liberty." *See Glucksberg,* 521 U.S. at 720-21, 117 S.Ct. 2258 (citations omitted). For the time being, this issue remains in "the arena of public debate and legislative action." *Id.* at 720, 117 S.Ct. 2258; *see also Gonzales v. Raich,* 125 S.Ct. at 2215.

As stated above, Justice Anthony Kennedy told us that "times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress." *Lawrence,* 539 U.S. at 579, 123 S.Ct. 2472. For now, federal law is blind to the wisdom of a future day when the right to use medical marijuana to alleviate excruciating pain may be deemed fundamental. Although that day has not yet dawned, considering that during the last ten years eleven states have legalized the use of medical marijuana, that day may be upon us sooner than expected. Until that day arrives, federal law does not recognize a fundamental right to use medical marijuana prescribed by a licensed physician to alleviate excruciating pain and human suffering. [FN16]

### III. *Tenth Amendment*

[18] Third, Raich contends that the Controlled Substances Act infringes upon the sovereign powers of the State of California, most notably the police powers, as conferred by the Tenth Amendment. The district court found that, as a valid exercise of Congress's Commerce Clause powers, the Controlled Substances Act could curtail the states' exercise of their police powers without violating the Tenth Amendment. *See Raich v. Ashcroft,* 248 F.Supp.2d at 927. The district court further held that the Controlled Substances Act regulates individual behavior and does not force the state to take any action. *Id.*

The Tenth Amendment reads, in its entirety: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. Police power is unquestionably an area of traditional state control.
***13** Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, ... matter[s] of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.

*Medtronic, Inc. v. Lohr,* 518 U.S. 470, 475, 116

S.Ct. 2240, 135 L.Ed.2d 700 (1996) (internal citations and quotation marks omitted). The Compassionate Use Act, aimed at providing for the health of the state's citizens, appears to fall squarely within the general rubric of the state's police powers.

[19] Generally speaking, however, a power granted to Congress trumps a competing claim based on a state's police powers. "The Court long ago rejected the suggestion that Congress invades areas reserved to the States by the Tenth Amendment simply because it exercises its authority under the Commerce Clause in a manner that displaces the States' exercise of their police powers." *Hodel v. Va. Surface Mining & Reclamation Ass'n,* 452 U.S. 264, 291 (1981); *see also United States v. Jones,* 231 F.3d 508, 515 (9th Cir.2000) ("We have held that if Congress acts under one of its enumerated powers, there can be no violation of the Tenth Amendment.").

The Supreme Court held in *Gonzales v. Raich* that Congress acted within the bounds of its Commerce Clause authority when it criminalized the purely intrastate manufacture, distribution, or possession of marijuana in the Controlled Substances Act. *See* 125 S.Ct. at 2215. Thus, after *Gonzales v. Raich,* it would seem that there can be no Tenth Amendment violation in this case. Raich concedes that recent Supreme Court decisions have largely foreclosed her Tenth Amendment claim, and she also concedes that this case does not implicate the " commandeering" line of cases.[FN17]

The Supreme Court's recent decision in *Gonzales v. Oregon,* 546 U.S. 243, 126 S.Ct. 904, 163 L.Ed.2d 748 (Jan. 17, 2006) is not to the contrary. In that case, the Court invalidated an Interpretive Rule issued by the Attorney General on the basis of statutory construction, not on the basis of constitutional invalidity under the Tenth Amendment. *See id.* at 925. Because the Attorney General's Rule was "incongruous with the *statutory* purposes and design" of the Controlled Substances Act, the Rule had to be nullified. *Id.* at 921 (emphasis added). Although *Gonzales v. Oregon* undoubtedly implicates federalism issues, its holding is inapposite to Raich's Tenth Amendment claim.

We hold that Raich failed to demonstrate a likelihood of success on her claim that the Controlled Substances Act violates the Tenth Amendment. Accordingly, the district court did not abuse its discretion in denying Raich's motion for preliminary injunction on that basis.

IV. *The Controlled Substances Act, By Its Terms*

Finally, Raich argues that the plain text of the Controlled Substances Act does not prohibit her from possessing marijuana pursuant to a doctor's order. She observes that the Controlled Substances Act prohibits possession of a controlled substance " unless such substance was obtained ... pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice." 21 U.S.C. § 844(a). The Controlled Substances Act defines "practitioner" as "a physician ... licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices ... to distribute, dispense, [or] administer ... a controlled substance in the course of professional practice." *Id.* § 802(21). Raich contends that her doctor is a licensed physician who may, in the jurisdiction in which he practices, administer controlled substances, including marijuana under the Compassionate Use Act, pursuant to a valid prescription. Accordingly, she argues that her possession of marijuana is legal under the Controlled Substances Act.

*14 [20] Raich raises this argument for the first time in her opening brief to our second review of her case. It is a long-standing rule in the Ninth Circuit that, generally, "we will not consider arguments that are raised for the first time on appeal. " *Smith v. Marsh,* 194 F.3d 1045, 1052 (9th Cir.1999). That rule is subject to the exceptions that we may consider a new issue if: (1) there are exceptional circumstances why the issue was not raised in the trial court; (2) the new issue arises while the appeal is pending because of a change in the law; or (3) the issue presented is a pure question of law and the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court. *See United States v. Carlson,* 900 F.2d 1346, 1349 (9th Cir.1990).

[21] Raich does not address the waiver issue in her opening brief, nor does she cite any relevant exception that might apply to her argument. We observe that there do not appear to be any exceptional circumstances concerning why Raich did not raise the argument below, and that there has been no change in the law relevant to this argument. Thus, Raich's only argument against waiver of this claim is that it is a purely legal question, and that the Government will suffer no prejudice as a result of Raich's failure to raise the issue below.[FN18]

[22] Even if a case falls within one of the exceptions to waiver enunciated in *Carlson,* we must "still decide whether the particular circumstances of the case overcome our presumption against hearing new arguments." *Dream Palace,* 384 F.3d at 1005. Although Raich's Controlled Substances Act claim appears to fall within the third exception, we conclude that this claim is waived because of the "particular circumstances" surrounding the claim.

[23] Raich failed to raise this claim before the district court and before this court in her appeal in *Raich v. Ashcroft,* 352 F.3d 1222. Furthermore, when we requested renewed briefing for this appeal by our order of September 6, 2005, we directed the parties to brief the "remaining claims for declaratory and injunctive relief on the basis of the Tenth Amendment, the Fifth and Ninth Amendments, and the doctrine of medical necessity, as set forth in their complaint." *Raich v. Gonzales,* No. 03-15481 (9th Cir. Sept.6, 2005) (order directing renewed briefing). Because Raich did not raise this issue below, and because our order instructed the parties to brief only the three claims set forth above, we hold that Raich's claim based on the plain language of the Controlled Substances Act is waived. We express no opinion as to the merits of that claim.

## CONCLUSION

We conclude that Raich has not demonstrated a likelihood of success on the merits of her action for injunctive relief. First, we hold that Raich's common law necessity defense is not foreclosed by *Oakland Cannabis* or the Controlled Substances Act, but that the necessity defense does not provide a proper basis for injunctive relief. Second, although changes in state law reveal a clear trend towards the protection of medical marijuana use, we hold that the asserted right has not yet gained the traction on a national scale to be deemed fundamental. Third, we hold that the Controlled Substances Act, a valid exercise of Congress's commerce power, does not violate the Tenth Amendment. Finally, we decline to reach Raich's argument that the Controlled Substances Act, by its terms, does not prohibit her possession and use of marijuana because this argument was not raised below.

***15** Accordingly, the judgment of the district court is **AFFIRMED.**

BEAM, Circuit Judge, concurring and dissenting:

I concur in the result reached by the court in this case, more particularly its holding that "Raich has not demonstrated a likelihood of success on the merits of her action for injunctive relief" and that the district court's denial of an injunction should be affirmed. I dissent from the court's expansive consideration of the doctrine of common law necessity as well as from several of the factual findings and legal conclusions applied to this issue and other claims before the court.

## DISCUSSION

We should decide only the case that is properly before us, not any other, and we should leave for another day any claim or issue not ripe for consideration. When we do otherwise, we simply create obitur dictum. *See, e.g., Carey v. Musladin,* --- U.S. ----, ----, 127 S.Ct. 649, 655, 166 L.Ed.2d 482 (2006) (Stevens, J., concurring) (citing *Sheet Metal Workers' v. EEOC,* 478 U.S. 421, 490, 106 S.Ct. 3019, 92 L.Ed.2d 344 (1986)).

This case returns to us on remand from the Supreme Court. But, the party that earlier supplied jurisdiction to the Supreme Court and to this court, Diane Monson, has withdrawn. *Ante* at ---- n. 1. Thus, the facts concerning Ms. Monson generously recited by the court are in no way relevant or material to the issues now raised by Raich.

Accordingly, the court likely has no jurisdiction over any claim asserted by the plaintiffs in this appeal but most certainly no jurisdiction to decide whether Raich may assert the doctrine of common law necessity in a future criminal prosecution.

At oral argument, counsel for the parties conceded that there is not now pending nor has there ever been pending a prosecution or even a threatened prosecution of Raich for possession or use of personal amounts of medicinal marijuana. Indeed, counsel for Raich acknowledged at oral argument that, to his knowledge, there has never been a federal criminal prosecution for simple possession or use of medicinal marijuana against anyone anywhere in California. Counsel for the government likewise indicated a lack of knowledge of any such prosecution and stated that it would be "incredibly unlikely" that any such federal prosecution would ensue in the future. So, the court's statement, *ante* at ----, that "[a]lthough Raich has not suffered any past injury, she is faced with the threat that the Government will seize her medical marijuana and prosecute her for violations of federal drug law" is plainly not supported by the record.

Accordingly, I return to the issues of standing, ripeness and justiciability advanced in my earlier dissent in this case. With specific regard to the court's lengthy discussion of and rulings upon the doctrine of common law necessity, it is clear that "[W]here it is impossible to know whether a party will ever be found to have violated a statute, or how, if such a violation is found, those charged with enforcing the statute will respond, any challenge to that statute is premature." *Alaska Airlines, Inc. v. City of Long Beach,* 951 F.2d 977, 986 (9th Cir.1991). To satisfy Article III's standing requirements, a plaintiff must show that she has suffered a concrete and particularized injury in fact that is actual or imminent (not conjectural or hypothetical). Plaintiff must also show that the injury is fairly traceable to the challenged action of the defendant and that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Citizens for Better Forestry v. United States Dep't of Agric.,* 341 F.3d 961, 969 (9th Cir.2003).

***16** *Raich v. Ashcroft,* 352 F.3d 1222, 1235-36 (9th Cir.2003) (Beam, J., dissenting).

Here, as to Raich, there is no discrete, challenged action from which an injury can fairly be traced. *San Diego County Gun Rights Committee v. Reno,* 98 F.3d 1121, 1127 (9th Cir.1996), requires Raich to show a specific threat of prosecution, and she bears the burden of establishing that the statute in question is actually being enforced. A specific warning of prosecution may suffice, but "a general threat of prosecution is not enough to confer standing." *Id.* Accordingly, the applicability, or not, of the doctrine of common law necessity is not a justiciable issue on this record and Raich currently has no standing to ask the court to consider the matter.

Assuming for purposes of discussion that the bare question of the viability of the doctrine is before us, I nonetheless respectfully disagree with substantial portions of the court's analysis of the matter.

The doctrine of common law (medical) necessity is an affirmative defense assertable only in a criminal prosecution. *E.g., United States v. Arellano-Rivera,* 244 F.3d 1119, 1125-26 (9th Cir.2001) (holding that "before a *defendant* may present evidence of a necessity defense, his offer of proof must establish that a reasonable jury could" ascertain all the elements of the defense) (emphasis added). After reference to several measures of potential injury and harm to Raich almost totally unrelated to a reasonably foreseeable criminal prosecution, the court ultimately recognizes the legal limitations of the defense, but only after issuing what amounts to a lengthy advisory opinion.

Here we are engaged in the review of a civil proceeding seeking declaratory relief and injunction, not a criminal adjudication. It is important to note that, contrary to the inference of the court in its factual dissertation, there has been no "testimony" in this case directly addressing the elements of this defense. The evidentiary record, such as it is, was developed in the district court through a request for a preliminary injunction under Rule 65 of the Federal Rules of *Civil* Procedure. All facts recited by the court, some of which are

admittedly testimonial in nature, arise from written " declarations" provided by Raich, Monson, Dr. Lucido and Dr. Rose, Monson's physician, in support of the injunction request. Yet, every case cited by the court concerning the viability of the doctrine and its elements involves a criminal prosecution.[FN1] The burden of proof of such a defense lies with the defendant and involves the following elements:
As a matter of law, a defendant must establish the existence of four elements to be entitled to a necessity defense: (1) that he was faced with a choice of evils and chose the lesser evil; (2) that he acted to prevent imminent harm; (3) that he reasonably anticipated a causal relation between his conduct and the harm to be avoided; and (4) that there were no other legal alternatives to violating the law.

***17** *United States v. Aguilar,* 883 F.2d 662, 693 (9th Cir.1989).

In this civil action, Raich is not presently in a posture to address elements one, two and three and cannot establish element four. She has not been faced with a "choice of evils," one of which could lead to a criminal prosecution. Nor has she acted to prevent "imminent harm." She has presented no evidence of a tested, adversarial nature sufficient to establish the causal relationship required by element three. And, she has not established and probably cannot establish that she has no legal alternative to violating the law.

The court states that "Raich's physician [Dr. Frank Lucido] presented uncontroverted evidence that Raich 'cannot be without *cannabis* as medicine' because she would quickly suffer 'precipitous medical deterioration' and 'could very well' die." *Ante* at ---- (emphasis added). This opinion evidence is, of course, gleaned from a written declaration seeking declaratory and injunctive relief while positing a very speculative happenstance. The opinion is not the fruit of an adversarial hearing involving the assertion of an affirmative defense by a criminal defendant in a criminal prosecution designed to test the admissibility and credibility of the proposed evidence. But even if Raich "cannot be without cannabis as medicine," as Dr. Lucido opines, cannabis (or its synthetic equivalent) as medicine is lawfully available to Raich through the prescription-dispensed drug Marinol.[FN2] And, newly crafted or presently existing drugs as yet untested by Raich may become known or available prior to any prosecution. So Raich may well have a legal alternative to the violation of the drug control laws.

I also cannot fully join the court's analysis of *United States v. Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001), as set forth in its footnote 4. *Ante* at ----. Although I do not concede that the Supreme Court's discussion in *Oakland Cannabis* is dicta, I do agree with the court's conclusion that the case does not abolish "common law necessity jurisprudence."

Thus, while I do not concur in the court's statement that "Raich appears to satisfy the threshold requirements for asserting a necessity defense under our case law," *ante* at ----, I do acknowledge that she certainly *may* be eligible to advance such a defense to criminal liability in the context of an actual prosecution.

Finally, if I fully understand the majority's approach, the most troubling aspect of its opinion is that it purports to let this court determine, on the evidence presented to the district court at the Rule 65 hearing, that Raich, and anyone similarly situated, is entitled to a medical necessity defense if criminally prosecuted in the future. I respectfully believe that this turns applicable federal criminal procedure on its head. The viability and applicability of this affirmative defense is a mixed question of law and fact. *Arellano-Rivera,* 244 F.3d at 1125. In a criminal prosecution of Raich for possession and use of marijuana for medicinal purposes, if it ever occurs, the issue of the sufficiency of the evidence to submit this particular defense to a jury is a question of law for the federal trial court. *Id.* The establishment of the factual elements of the defense, if submitted, is for the jury (or other trier of fact). *Id.* Imposition of this court's rulings into a later prosecution would improperly pretermit established criminal procedure. Thus, the court's medical necessity discussion is a wholly speculative and possibly unconstitutional

jurisprudential exercise.

CONCLUSION

***18** Accordingly, for the above-stated reasons, I dissent from portions of the court's factual findings and legal conclusions but concur in the denial of Raich's request for injunction and in the court's affirmance of the district court.

FN* Karen Tandy is substituted for her predecessor, Asa Hutchinson, as Administrator of the Drug Enforcement Administration, pursuant to Fed. R.App. P. 43(c)(2).

FN** The Honorable C. Arlen Beam, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

FN1. Plaintiff-Appellant Monson withdrew from this action on December 12, 2005.

FN2. We also note that the Supreme Court did not question constitutional standing in this case. *See Gonzales v. Raich,* 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1.

FN3. We address Raich's necessity claim before her constitutional substantive due process claim because "an Act of Congress ought not be construed to violate the Constitution if any other possible construction remains available." *Gilmore v. California,* 220 F.3d 987, 998 (9th Cir.2000) (quoting *NLRB v. Catholic Bishop,* 440 U.S. 490, 500, 99 S.Ct. 1313, 59 L.Ed.2d 533 (1979)).

FN4. Dicta in a recent Supreme Court decision questioned the ongoing vitality of common law necessity defense. The majority in *United States v. Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 490, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001) ("*Oakland Cannabis* "), stated that "it is an open question whether federal courts ever have authority to recognize a necessity defense not provided by statute." But the majority ultimately conceded that the "Court ha[d] discussed the possibility of a necessity defense without altogether rejecting it." *Id.* (citing *Bailey,* 444 U.S. at 415, 100 S.Ct. 624). Three Justices filed a separate concurrence in *Oakland Cannabis,* noting that "the Court gratuitously casts doubt on 'whether necessity can ever be a defense' to *any* federal statute that does not explicitly provide for it, calling such a defense into question by a misleading reference to its existence as an 'open question.' " *Id.* at 501, 121 S.Ct. 1711 (Stevens, J., concurring) (quoting majority opinion) (emphasis in original). "[O]ur precedent has expressed no doubt about the viability of the common-law defense, even in the context of federal criminal statutes that do not provide for it in so many words." *Id.* (citing *Bailey,* 444 U.S. at 415, 100 S.Ct. 624).
We do not believe that the *Oakland Cannabis* dicta abolishes more than a century of common law necessity jurisprudence. *See, e.g., Regina v. Dudley & Stephens,* 14 Q.B.D. 273 (1884).

FN5. As the Supreme Court did in *Oakland Cannabis,* we first address the underlying principles of the common law necessity defense, and then turn to the defense's relationship to the Controlled Substances Act and the relief sought. *See, e.g., Oakland Cannabis,* 532 U.S. at 490-95, 121 S.Ct. 1711.

FN6. This litany of ailments makes no mention of the fact that Raich was confined to a wheelchair before she found effective pain management in marijuana, which restored her ability to walk. The seriousness of her conditions cannot be overemphasized: in 1997, the extreme physical and psychological pain led Raich

to attempt suicide. We are mindful that " extreme pain totally occupies the psychic world" and that "in serious pain the claims of the body utterly nullify the claims of the world." Seth F. Kreimer, *The Second Time as Tragedy: The Assisted Suicide Cases and the Heritage of Roe v. Wade,* 24 Hastings Const. L.Q. 863, 895 & n. 157 (1997) (citations omitted). Raich has shown remarkable fortitude in pursuing this action to vindicate the rights of the infirm despite her precarious physical condition.

FN7. The causal connection prong limits the danger that a medical necessity exception could open the floodgates to widespread exceptions to the Controlled Substances Act. A marijuana "necessity" claimant absolutely must present, as Raich has, testimony that the allegedly unlawful action was taken at the direction of a doctor.

FN8. The Government suggests that certain federal programs exist which might allow Raich to obtain marijuana lawfully. *See, e.g.,* 21 U.S.C. § 823(f) (authorizing the Secretary of Health and Human Services to permit medical practitioners to design and implement research protocols using Schedule I substances, including marijuana, on a case-by-base basis). Amici curiae American Civil Liberties Union Foundation and Marijuana Policy Project and Rick Doblin, Ph.D make abundantly clear that this is not a tenable "alternative." The program is highly restricted and has not accepted new medical marijuana patients since 1992.

FN9. We cannot ignore that the unusual circumstances of this case raise the danger of acute preconviction harms. The arrest of Raich or her suppliers, or the confiscation of her medical marijuana would cause Raich severe physical trauma. Under the right circumstances, Raich might obtain relief from the courts for preconviction harm based on common law necessity. *See generally Jones v. City of Los Angeles,* 444 F.3d 1118, 1129-31 (9th Cir.2006) (noting that constitutionally cognizable harm can occur "at arrest, at citation, or even earlier," and criticizing the government's position that "would allow the state to criminalize a protected behavior or condition and cite, arrest, jail, and even prosecute individuals for violations, so long as no conviction resulted ").

FN10. We refer to these claims together as the substantive due process claim.

FN11. Although the Fifth Amendment's Due Process Clause is applicable here, cases finding substantive rights under the Fourteenth Amendment's Due Process Clause are equally relevant. *See Troxel v. Granville,* 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) ("We have long recognized that the Amendment's Due Process Clause, *like its Fifth Amendment counterpart,* guarantees more than fair process. The Clause also includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests." (emphasis added) (internal citation and quotation marks omitted)).

FN12. This degree of specificity is required. In *Cruzan v. Director, Mo. Dept. of Health,* 497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990), the Court declined to frame the right as an unqualified right to die, and instead specifically construed the right as a " constitutionally protected right to refuse lifesaving hydration and nutrition." *Id.* at 279, 110 S.Ct. 2841.

FN13. We also find persuasive the suggestion of amicus curiae California Medical Association and California Nurses Association: that the definition incorporate

reference to the fact that Raich seeks to establish this right "on a physician's advice. " We also think that resort to a Schedule I substance should be a last resort, and therefore narrow the right by limiting it to circumstances "when all other prescribed medications have failed."

FN14. The mere enactment of a law, state or federal, that prohibits certain behavior does not necessarily mean that the behavior is not deeply rooted in this country's history and traditions. It is noteworthy, however, that over twenty-five years went by before any state enacted a law to protect the alleged right.

FN15. While these lesser endorsements of medical marijuana are relevant, they cannot carry the same weight as legislative enactments that fully decriminalize the use of medical marijuana. As the *Lawrence* Court considered the number of states that retained laws that prohibited sodomy, so too must we consider the number of states that continue to prohibit medical marijuana.

FN16. Because we find no fundamental right here, we do not address whether any law that limits that right is narrowly drawn to serve a compelling state interest. *See Flores,* 507 U.S. at 301-02, 113 S.Ct. 1439. We note, however, that, a recent Supreme Court case suggests that the Controlled Substances Act is not narrowly drawn when fundamental rights are concerned. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418, 126 S.Ct. 1211, 1221-23, 163 L.Ed.2d 1017 (Feb. 21, 2006) (observing that "mere invocation of the general characteristics of Schedule I substances, as set forth in the Controlled Substances Act, cannot carry the day," and that the government had presented no evidence that narrow exceptions to the Schedule I prohibitions would undercut the government's ability to effectively enforce the Controlled Substances Act).

FN17. The commandeering cases involve attempts by Congress to direct states to perform certain functions, command state officers to administer federal regulatory programs, or to compel states to adopt specific legislation. *See, e.g., Printz v. United States,* 521 U.S. 898, 935, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997); *New York v. United States,* 505 U.S. 144, 166, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). The Controlled Substances Act, by contrast, "does not require the[state legislature] to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals." *Reno v. Condon,* 528 U.S. 141, 151, 120 S.Ct. 666, 145 L.Ed.2d 587 (2000).

FN18. We assess prejudice to a party by asking whether the party is in a different position than it would have been absent the alleged deficiency. *See Zhang v. Am. Gem Seafoods, Inc.,* 339 F.3d 1020, 1035 (9th Cir.2003). The rule "serves to ensure that legal arguments are considered with the benefit of a fully developed factual record, offers appellate courts the benefit of the district court's prior analysis, and prevents parties from sand-bagging their opponents with new arguments on appeal." *Dream Palace v. County of Maricopa,* 384 F.3d 990, 1005 (9th Cir.2004). It does not appear that the Government has suffered any prejudice from Raich's failure to raise this claim below: the Government is in the same position that it would have otherwise been.

FN1. *See, e.g., United States v. Bailey,* 444 U.S. 394, 100 S.Ct. 624, 62 L.Ed.2d 575 (1980) (discussing the choice of two evils doctrine); *United States v. Schoon,* 971 F.2d 193 (9th Cir.1991) (giving the burning jail example); *United States v. Aguilar,* 883 F.2d 662 (9th Cir.1989) (explaining the standards and elements of the necessity defense).

FN2. The active ingredient in Marinol is synthetic delta-9-tetrahydrocannabinol, a naturally occurring component of Cannabis sativa L, the marijuana Raich says she now consumes. Physicians' Desk Reference, 61st ed., 2007 at 3333.

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ATTACHMENT NO. 1-23

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**(Cite as: 545 U.S. 1, 125 S.Ct. 2195)**

Gonzales v. Raich
U.S.,2005.

Supreme Court of the United States
Alberto R. GONZALES, Attorney General, et al., Petitioners,
v.
Angel McClary RAICH et al.
**No. 03-1454.**

Argued Nov. 29, 2004.
Decided June 6, 2005.

**Background:** Users and growers of marijuana for medical purposes under California Compassionate Use Act sought declaration that Controlled Substances Act (CSA) was unconstitutional as applied to them. The United States District Court for the Northern District of California, Martin J. Jenkins, J., 248 F.Supp.2d 918, denied plaintiffs' motion for preliminary injunction. Plaintiffs appealed. The United States Court of Appeals for the Ninth Circuit, Pregerson, Circuit Judge, 352 F.3d 1222, reversed and remanded. Certiorari was granted.

**Holding:** The Supreme Court, Justice Stevens, held that application of CSA provisions criminalizing manufacture, distribution, or possession of marijuana to intrastate growers and users of marijuana for medical purposes did not violate Commerce Clause.

Vacated and remanded.

Justice Scalia concurred in judgment and filed opinion.

Justice O'Connor dissented and filed opinion in which Chief Justice Rehnquist and Justice Thomas joined in part.

Justice Thomas dissented and filed opinion.

West Headnotes

**[1] Commerce 83 ⇐82.6**

83 Commerce
83II Application to Particular Subjects and Methods of Regulation
83II(J) Offenses and Prosecutions
83k82.5 Federal Offenses and Prosecutions
83k82.6 k. In General. Most Cited Cases

**Controlled Substances 96H ⇐6**

96H Controlled Substances
96HI In General
96Hk4 Statutes and Other Regulations
96Hk6 k. Validity. Most Cited Cases

Application of Controlled Substances Act (CSA) provisions criminalizing manufacture, distribution, or possession of marijuana to intrastate growers and users of marijuana for medical purposes, as otherwise authorized by California Compassionate Use Act, did not exceed Congress' authority under Commerce Clause; prohibition of intrastate growth and use of marijuana was rationally related to regulation of interstate commerce in marijuana. U.S.C.A. Const. Art. 1, § 8, cl. 3; Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), 404(a), 21 U.S.C.A. §§ 841(a)(1), 844(a) ; West's Ann.Cal.Health & Safety Code § 11362.5.

**[2] Commerce 83 ⇐7(2)**

83 Commerce

545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1, 73 USLW 4407, 05 Cal. Daily Op. Serv. 4725, 2005 Daily Journal D.A.R. 6530, 18 Fla. L. Weekly Fed. S 327
**(Cite as: 545 U.S. 1, 125 S.Ct. 2195)**

83I Power to Regulate in General
83k2 Constitutional Grant of Power to Congress
83k7 Internal Commerce of States
83k7(2) k. Activities Affecting Interstate Commerce. Most Cited Cases
Commerce Clause grants Congress power to regulate purely local activities that are part of economic class of activities that have substantial effect on interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

**[3] Constitutional Law 92 ⇐2483**

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2483 k. Determination of Propriety of Classification. Most Cited Cases
(Formerly 92k70.1(5))
Where class of activities is regulated and that class is within reach of federal power, courts have no power to excise, as trivial, individual instances of class.

**[4] Commerce 83 ⇐5**

83 Commerce
83I Power to Regulate in General
83k2 Constitutional Grant of Power to Congress
83k5 k. Commerce Among the States. Most Cited Cases
State action cannot circumscribe Congress' plenary commerce power. U.S.C.A. Const. Art. 1, § 8, cl. 3.
West CodenotesNegative Treatment Vacated21 U.S.C. § 841(a)(1) ***2196 *1 Syllabus*** [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

California's Compassionate Use Act authorizes limited marijuana use for medicinal purposes. Respondents Raich and Monson are California residents who both use doctor-recommended marijuana for serious medical conditions. After federal Drug Enforcement Administration (DEA) agents seized and destroyed all six of Monson's cannabis plants, respondents brought this action seeking injunctive and declaratory relief prohibiting the enforcement of the federal Controlled Substances Act (CSA) to the extent it prevents them from possessing, obtaining, or manufacturing cannabis for their personal medical use. Respondents claim that enforcing the CSA against them would violate the Commerce Clause and other constitutional provisions. The District Court denied respondents' motion for a preliminary injunction, but the Ninth Circuit reversed, finding that they had demonstrated a strong likelihood of success on the claim that the CSA is an unconstitutional exercise of Congress' Commerce Clause authority as applied to the intrastate, noncommercial cultivation and possession of cannabis for personal medical purposes as recommended by a patient's physician pursuant to valid California state law. The court relied heavily on *United States v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626, and *United States v. Morrison*, 529 U.S. 598, 120 S.Ct. 1740, 146 L.Ed.2d 658, to hold that this separate class of purely local activities was beyond the reach of federal power.

*2 *Held:* Congress' Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana in compliance with California law. Pp. 2201-2215.

(a) For the purposes of consolidating various drug laws into a comprehensive statute, providing meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthening law enforcement tools **2197 against international and interstate drug trafficking, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II of which is the CSA. To effectuate the statutory goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute,

dispense, or possess any controlled substance except as authorized by the CSA. 21 U.S.C. §§ 841(a)(1), 844(a). All controlled substances are classified into five schedules, § 812, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body, §§ 811, 812. Marijuana is classified as a Schedule I substance, § 812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment, § 812(b)(1). This classification renders the manufacture, distribution, or possession of marijuana a criminal offense. §§ 841(a)(1), 844(a). Pp. 2201-2204.

(b) Congress' power to regulate purely local activities that are part of an economic "class of activities" that have a substantial effect on interstate commerce is firmly established. See, *e.g., Perez v. United States,* 402 U.S. 146, 151, 91 S.Ct. 1357, 28 L.Ed.2d 686. If Congress decides that the " 'total incidence' " of a practice poses a threat to a national market, it may regulate the entire class. See, *e.g., id.,* at 154-155, 91 S.Ct. 1357. Of particular relevance here is *Wickard v. Filburn,* 317 U.S. 111, 127-128, 63 S.Ct. 82, 87 L.Ed. 122, where, in rejecting the appellee farmer's contention that Congress' admitted power to regulate the production of wheat for commerce did not authorize federal regulation of wheat production intended wholly for the appellee's own consumption, the Court established that Congress can regulate purely intrastate activity that is not itself "commercial," *i.e.,* not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity. The similarities between this case and *Wickard* are striking. In both cases, the regulation is squarely within Congress' commerce power because production of the commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for that commodity. In assessing the scope of Congress' Commerce Clause authority, the Court need not determine whether respondents' activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a " rational basis" exists for so concluding. *E.g., Lopez,* 514 U.S., at 557, 115 S.Ct. 1624. Given the enforcement*3 difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, 21 U.S.C. § 801(5) , and concerns about diversion into illicit channels, the Court has no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA. Pp. 2204-2209.

(c) Respondents' heavy reliance on *Lopez* and *Morrison* overlooks the larger context of modern-era Commerce Clause jurisprudence preserved by those cases, while also reading those cases far too broadly. The statutory challenges at issue there were markedly different from the challenge here. Respondents ask the Court to excise individual applications of a concededly valid comprehensive statutory scheme. In contrast, in both *Lopez* and *Morrison,* the parties asserted that a particular statute or provision fell outside Congress' commerce power in its entirety. This distinction is pivotal for the Court has often reiterated that " [w]here the class of activities is regulated and that class is within the reach of federal power, the **2198 courts have no power 'to excise, as trivial, individual instances' of the class." *Perez,* 402 U.S., at 154, 91 S.Ct. 1357. Moreover, the Court emphasized that the laws at issue in *Lopez* and *Morrison* had nothing to do with "commerce" or any sort of economic enterprise. See *Lopez,* 514 U.S., at 561, 115 S.Ct. 1624; *Morrison,* 529 U.S., at 610, 120 S.Ct. 1740. In contrast, the CSA regulates quintessentially economic activities: the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market. Prohibiting the intrastate possession or manufacture of an article of commerce is a rational means of regulating commerce in that product. The Ninth Circuit cast doubt on the CSA's constitutionality by isolating a distinct class of activities that it held to be beyond the reach of federal power: the intrastate, noncommercial cultivation, possession, and use of marijuana for personal medical purposes on the advice of a physician and in accordance with state law. However, Congress clearly acted rationally in

determining that this subdivided class of activities is an essential part of the larger regulatory scheme. The case comes down to the claim that a locally cultivated product that is used domestically rather than sold on the open market is not subject to federal regulation. Given the CSA's findings and the undisputed magnitude of the commercial market for marijuana, *Wickard* and its progeny foreclose that claim. Pp. 2209-2215.

352 F.3d 1222, vacated and remanded.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and THOMAS, J., joined as to all but Part III. THOMAS, J., filed a dissenting opinion.

Robert A. Raich, Oakland, David M. Michael, The DeMartini Historical, Landmark Building, San Francisco, CA, Randy E. Barnett, Boston University, School of Law, Boston, MA, Robert A. Long, Jr., Counsel of Record, Heidi C. Doerhoff, Joshua D. Greenberg, Covington & Burling, Washington, DC, for Respondents.
Paul D. Clement, Acting Solicitor General, Counsel of Record, Peter D. Keisler, Assistant Attorney General, Edwin S. Kneedler, Deputy Solicitor General, Lisa S. Blatt, Assistant to the Solicitor General, Mark B. Stern, Alisa B. Klein, Mark T. Quinlivan, Attorneys, Department of Justice, Washington, D.C., Brief for the Petitioners.For U.S. Supreme Court briefs, see:2004 WL 1799022 (Pet.Brief)2004 WL 2308766 (Resp.Brief)2004 WL 2652615 (Reply.Brief)
Justice STEVENS delivered the opinion of the Court.
*5 California is one of at least nine States that authorize the use of marijuana for medicinal purposes.[FN1] The question presented**2199 in this case is whether the power vested in Congress by Article I, § 8, of the Constitution "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its authority to "regulate Commerce with foreign Nations, and among the several States" includes the power to prohibit the local cultivation and use of marijuana in compliance with California law.

FN1. See Alaska Stat. §§ 11.71.090, 17.37.010-17.37.080 (Lexis 2004); Colo. Const., Art. XVIII, § 14, Colo.Rev.Stat. § 18-18-406.3 (Lexis 2004); Haw.Rev.Stat. §§ 329-121 to 329-128 (2004 Cum.Supp.); Me.Rev.Stat. Ann., Tit. 22, § 2383-B(5) (West 2004); Nev. Const., Art. 4, § 38, Nev.Rev.Stat. §§ 453A.010-453A.810 (2003); Ore.Rev.Stat. §§ 475.300-475.346 (2003); Vt. Stat. Ann., Tit. 18, §§ 4472-4474d (Supp.2004); Wash. Rev.Code §§ 69.51.010-69.51.080 (2004); see also Ariz.Rev.Stat. Ann. § 13-3412.01 (West Supp.2004) (voter initiative permitting physicians to prescribe Schedule I substances for medical purposes that was purportedly repealed in 1997, but the repeal was rejected by voters in 1998). In November 2004, Montana voters approved Initiative 148, adding to the number of States authorizing the use of marijuana for medical purposes.

I

California has been a pioneer in the regulation of marijuana. In 1913, California was one of the first States to prohibit the sale and possession of marijuana,[FN2] and at the end of the century, California became the first State to authorize limited use of the drug for medicinal purposes. In 1996, California voters passed Proposition 215, now codified as the Compassionate Use Act of 1996.[FN3] The proposition was designed*6 to ensure that " seriously ill" residents of the State have access to marijuana for medical purposes, and to encourage Federal and State Governments to take steps towards ensuring the safe and affordable distribution of the drug to patients in need. [FN4] THE ACT CREATES AN eXEmption from criminal prosecution for physicians,[FN5] as well as for patients and primary caregivers who possess or cultivate marijuana for medicinal purposes with the

recommendation or approval of a physician. [FN6] A "primary caregiver" is a person who has consistently assumed responsibility for the housing, health, or safety of the patient.[FN7]

FN2. 1913 Cal. Stats. ch. 342, § 8*a;* see also Gieringer, The Origins of Cannabis Prohibition in California, Contemporary Drug Problems, 21-23 (rev.2005) Mar. available at http://www.canorml.org/background/caloriginsmjproh.pdf (all internet materials as visited June 2, 2005, and available in clerk of court's case file.

FN3. Cal. Health & Safety Code Ann. § 11362.5 . The California Legislature recently enacted additional legislation supplementing the Compassionate Use Act. §§ 11362.7-11362.9 (West Supp.2005).

FN4. "The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:
"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.
"(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
"(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." § 11362.5(b)(1) .

FN5. "Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. " § 11362.5(c) .

FN6. "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." § 11362.5(d) .

FN7. § 11362.5(e) .

Respondents Angel Raich and Diane Monson are California residents who suffer from a variety of serious medical conditions and have sought to avail themselves of medical marijuana pursuant to **2200 the terms of the Compassionate Use *7 Act. They are being treated by licensed, board-certified family practitioners, who have concluded, after prescribing a host of conventional medicines to treat respondents' conditions and to alleviate their associated symptoms, that marijuana is the only drug available that provides effective treatment. Both women have been using marijuana as a medication for several years pursuant to their doctors' recommendation, and both rely heavily on cannabis to function on a daily basis. Indeed, Raich's physician believes that forgoing cannabis treatments would certainly cause Raich excruciating pain and could very well prove fatal.

Respondent Monson cultivates her own marijuana, and ingests the drug in a variety of ways including smoking and using a vaporizer. Respondent Raich, by contrast, is unable to cultivate her own, and thus relies on two caregivers, litigating as "John Does," to provide her with locally grown marijuana at no charge. These caregivers also process the cannabis into hashish or keif, and Raich herself processes

some of the marijuana into oils, balms, and foods for consumption.

On August 15, 2002, county deputy sheriffs and agents from the federal Drug Enforcement Administration (DEA) came to Monson's home. After a thorough investigation, the county officials concluded that her use of marijuana was entirely lawful as a matter of California law. Nevertheless, after a 3-hour standoff, the federal agents seized and destroyed all six of her cannabis plants.

Respondents thereafter brought this action against the Attorney General of the United States and the head of the DEA seeking injunctive and declaratory relief prohibiting the enforcement of the federal Controlled Substances Act (CSA), 84 Stat. 1242, 21 U.S.C. § 801 *et seq.*, to the extent it prevents them from possessing, obtaining, or manufacturing cannabis for their personal medical use. In their complaint and supporting affidavits, Raich and Monson described the severity of their afflictions, their repeatedly futile attempts ***8** to obtain relief with conventional medications, and the opinions of their doctors concerning their need to use marijuana. Respondents claimed that enforcing the CSA against them would violate the Commerce Clause, the Due Process Clause of the Fifth Amendment, the Ninth and Tenth Amendments of the Constitution, and the doctrine of medical necessity.

The District Court denied respondents' motion for a preliminary injunction. *Raich v. Ashcroft,* 248 F.Supp.2d 918 (N.D.Cal.2003). Although the court found that the federal enforcement interests " wane[d]" when compared to the harm that California residents would suffer if denied access to medically necessary marijuana, it concluded that respondents could not demonstrate a likelihood of success on the merits of their legal claims. *Id.,* at 931.

A divided panel of the Court of Appeals for the Ninth Circuit reversed and ordered the District Court to enter a preliminary injunction.[FN8] *Raich v. Ashcroft,* 352 F.3d 1222 (2003). The court found that respondents had "demonstrated a strong likelihood****2201** of success on their claim that, as applied to them, the CSA is an unconstitutional exercise of Congress' Commerce Clause authority." *Id.,* at 1227. The Court of Appeals distinguished prior Circuit cases upholding the CSA in the face of Commerce Clause challenges by focusing on what it deemed to be the "*separate and distinct class of activities*" at issue in this case: "the intrastate, noncommercial cultivation and possession of cannabis for personal medical purposes as recommended by a patient's physician pursuant to valid California state law." *Id.,* at 1228. The ***9** court found the latter class of activities "different in kind from drug trafficking" because interposing a physician's recommendation raises different health and safety concerns, and because "this limited use is clearly distinct from the broader illicit drug market-as well as any broader commercial market for medicinal marijuana-insofar as the medicinal marijuana at issue in this case is not intended for, nor does it enter, the stream of commerce." *Ibid.*

> FN8. On remand, the District Court entered a preliminary injunction enjoining petitioners " 'from arresting or prosecuting Plaintiffs Angel McClary Raich and Diane Monson, seizing their medical cannabis, forfeiting their property, or seeking civil or administrative sanctions against them with respect to the intrastate, non-commercial cultivation, possession, use, and obtaining without charge of cannabis for personal medical purposes on the advice of a physician and in accordance with state law, and which is not used for distribution, sale, or exchange.' " Brief for Petitioners 9.

The majority placed heavy reliance on our decisions in *United States v. Lopez,* 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), and *United States v. Morrison,* 529 U.S. 598, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000), as interpreted by recent Circuit precedent, to hold that this separate class of purely local activities was beyond the reach of federal power. In contrast, the dissenting judge concluded that the CSA, as applied to respondents, was clearly valid under *Lopez* and *Morrison;* moreover, he

thought it "simply impossible to distinguish the relevant conduct surrounding the cultivation and use of the marijuana crop at issue in this case from the cultivation and use of the wheat crop that affected interstate commerce in *Wickard v. Filburn*." 352 F.3d, at 1235 (opinion of Beam, J., dissenting) (citation omitted).

The obvious importance of the case prompted our grant of certiorari. 542 U.S. 936, 124 S.Ct. 2909, 159 L.Ed.2d 811 (2004). The case is made difficult by respondents' strong arguments that they will suffer irreparable harm because, despite a congressional finding to the contrary, marijuana does have valid therapeutic purposes. The question before us, however, is not whether it is wise to enforce the statute in these circumstances; rather, it is whether Congress' power to regulate interstate markets for medicinal substances encompasses the portions of those markets that are supplied with drugs produced and consumed locally. Well-settled law controls our answer. The CSA is a valid exercise of federal power, even as applied to the troubling facts of this case. We accordingly vacate the judgment of the Court of Appeals.

***10 II**

Shortly after taking office in 1969, President Nixon declared a national "war on drugs." [FN9] As the first campaign of that war, Congress set out to enact legislation that would consolidate various drug laws on the books into a comprehensive statute, provide meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthen law enforcement tools against the traffic in illicit drugs.[FN10] That effort culminated in the passage of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Stat. 1236.

FN9. See D. Musto & P. Korsmeyer, The Quest for Drug Control 60 (2002) (hereinafter Musto & Korsmeyer).

FN10. H.R.Rep. No. 91-1444, pt. 2, p. 22 (1970) (hereinafter H.R. Rep.); 26 Congressional Quarterly Almanac 531 (1970) (hereinafter Almanac); Musto & Korsmeyer 56-57.

****2202** This was not, however, Congress' first attempt to regulate the national market in drugs. Rather, as early as 1906 Congress enacted federal legislation imposing labeling regulations on medications and prohibiting the manufacture or shipment of any adulterated or misbranded drug traveling in interstate commerce.[FN11] Aside from these labeling restrictions, most domestic drug regulations prior to 1970 generally came in the guise of revenue laws, with the Department of the Treasury serving as the Federal Government's primary enforcer.[FN12] For example, the primary drug control law, before being repealed by the passage of the CSA, was the Harrison Narcotics Act of 1914, 38 Stat. 785 (repealed 1970). The Harrison Act sought to exert control over the possession and sale of narcotics, specifically cocaine and opiates, by requiring producers, distributors, and purchasers to register with the Federal Government, by assessing taxes against ***11** parties so registered, and by regulating the issuance of prescriptions.[FN13]

FN11. Pure Food and Drug Act of 1906, ch. 3915, 34 Stat. 768, repealed by Act of June 25, 1938, ch. 675, § 902(a), 52 Stat. 1059.

FN12. See *United States v. Doremus,* 249 U.S. 86, 39 S.Ct. 214, 63 L.Ed. 493 (1919) ; *Leary v. United States,* 395 U.S. 6, 14-16, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969).

FN13. See *Doremus,* 249 U.S., at 90-93, 39 S.Ct. 214.

Marijuana itself was not significantly regulated by the Federal Government until 1937 when accounts of marijuana's addictive qualities and physiological effects, paired with dissatisfaction with enforcement efforts at state and local levels, prompted Congress to pass the Marihuana Tax Act, 50 Stat. 551